

## **EXHIBIT 1**

### **Double Track Project**

The Double Track Project includes implementing double-tracking and platform upgrades at five stations along a 26.6 mile-segment of the SSL between Gary and Michigan City, Indiana. Approximately 8.7 miles of double track already exists, and minimal construction would take place in this section. Within the remaining 16.4 mile segment, a new second main track would be constructed, mostly within existing railroad right-of-way (ROW) and next to the existing track. Additionally, in Michigan City, the street running tracks on 10<sup>th</sup> and 11<sup>th</sup> Streets would be removed and two new tracks would be constructed from Sheridan Avenue to Michigan Boulevard. Approximately 7.9 miles of active passing sidings exist along the route and would be used as the second main track to help reduce project scope and cost. Five platform upgrades would occur at the following stations:

- **Gary/Miller Station:** Construct two new high level platforms, two 8-car storage tracks for additional rush hour trains, a station house, and additional parking.
- **Portage/Ogden Dunes Station:** Construct two new high-level platforms and additional parking.
- **Dune Park Station:** Construct second boarding platform, re-align Calumet Trail under State Route (SR) 49 bridge, and construct additional parking.
- **Beverly Shores Station:** Construct two low level platforms.

**Michigan City/11<sup>th</sup> Street Station:** Remove street-running tracks along 10<sup>th</sup> and 11<sup>th</sup> Streets; construct two new tracks south of the 10<sup>th</sup> Street ROW from Sheridan Avenue to Chicago Street (where it crosses Amtrak), two new tracks along 11<sup>th</sup> Street, two high-level platforms, and a new station house at 11<sup>th</sup> Street Station; and convert 11<sup>th</sup> Street to one-way auto traffic.

## **EXHIBIT 2**

### **West Lake Corridor Project**

The West Lake Corridor Project is an approximately eight-mile southern extension of the existing NICTD South Shore Line (SSL) between Dyer and Hammond, Indiana. Traveling north from the southern terminus near Main Street at the Munster/Dyer municipal boundary, the West Lake Project would include new track operating at-grade on a separate right-of-way (to be acquired) adjacent to the CSX Transportation (CSX) Monon Subdivision freight line in Dyer and Munster. The West Lake Project alignment would be elevated from 45<sup>th</sup> Street to the Canadian National Railway (CN) Elsdon Subdivision freight line at the Maynard Junction. North of the CN, the West Lake Project alignment would return to grade and join with the publicly owned former Monon Railroad corridor in Munster and Hammond, Indiana, and continue north. The West Lake Project would relocate the existing Monon Trail pedestrian bridge crossing over the Little Calumet River and build a new rail bridge at the location of the former Monon Railroad Bridge. The West Lake Project alignment would cross under US 80/94 and continue north on the former Monon Railroad corridor until Sibley Street. From Douglas Street north, the West Lake Project would be elevated over all streets and railroads, using a combination of retaining walls, elevated structures, and bridges.

The West Lake Project would end just east of the Indiana Harbor Belt at the state line, where it would connect with the SSL. Trains would operate on the existing Metra Electric District (MED) line for the final 14 miles, terminating at Millennium Station in downtown Chicago. Station locations for the West Lake Project are Munster/Dyer Main Street, Munster Ridge Road, South Hammond, and Hammond Gateway. The four new stations along the alignment—two in Munster and two in Hammond—would have high-level station platforms proposed to be 720 feet long and approximately 10 feet wide. They would typically have three ramps: one at both ends and a third in the middle, depending on access needs based on the surrounding area. Each station stop would have warming shelters, a depot (except at the Munster Ridge Road Station), parking facilities, benches, trash receptacles, bicycle racks, and other site amenities.

Additional project elements include a maintenance facility with a layover yard just south of the Hammond Gateway Station and west of Sheffield Avenue, and three traction power substations (TPSSs) powering the overhead catenary system at the following locations: the vehicle maintenance and storage facility site, the South Hammond Station parking lot, and the Munster/Dyer Main Street Station. The TPSSs would be enclosed to secure installations housing electrical equipment and controls. The TPSSs would feed an overhead catenary system that powers the vehicles. The Monon Trail, an existing pedestrian/bicycle route, would be preserved as part of the West Lake Corridor Project.

**EXHIBIT 3A**

**Double Track Project Cost Budget**

The Parties agree that this Exhibit constitutes the Double Track Project Cost Budget. The obligations of IFA and RDA to fund and finance Project Costs are limited to the amounts set forth in this Cost Budget, which may be subsequently amended in writing by agreement of the Parties, and by the terms of the applicable Financing Plan and the Governance Agreement.

Base Cost and Allocated Contingency												
SCC Category		Total From Right	2017 Q1	2017 Q2	2017 Q3	2017 Q4	2018 Q1	2018 Q2	2018 Q3	2018 Q4		
10	GUIDEWAY & TRACK ELEMENTS (route miles)	\$72,240,549	Base Cost	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$14,354,033	Allocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20	STATIONS, STOPS, TERMINALS, INTERMODAL (number)	\$29,781,492	Base Cost	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$4,467,224	Allocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$196,383	Base Cost	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$29,457	Allocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40	SITWORK & SPECIAL CONDITIONS	\$44,693,729	Base Cost	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$10,513,565	Allocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
50	SYSTEMS	\$91,576,404	Base Cost	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$13,854,179	Allocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
60	ROW, LAND, EXISTING IMPROVEMENTS	\$36,791,635	Base Cost	\$0	\$0	\$1,616	\$248,743	\$2,836	\$20,193	\$0	\$0	\$0
		\$4,270,861	Allocated Contingency	\$0	\$0	\$163	\$25,023	\$285	\$2,031	\$0	\$0	\$0
80	PROFESSIONAL SERVICES (applies to Cats. 10-50)	\$57,284,012	Base Cost	\$1,511,360	\$1,511,360	\$1,511,360	\$1,517,581	\$171,142	\$171,142	\$171,142	\$118,514	\$660
		\$7,296,912	Allocated Contingency	\$8,421	\$8,421	\$8,421	\$8,456	\$954	\$954	\$954	\$660	\$660
Grand Total		\$332,564,204	Base Cost	\$1,511,360	\$1,511,360	\$1,512,977	\$1,766,324	\$173,977	\$191,334	\$171,142	\$118,514	\$660
		\$54,786,232	Allocated Contingency	\$8,421	\$8,421	\$8,584	\$33,479	\$1,239	\$2,985	\$954	\$660	\$660
FTA Ineligible Costs <sup>(1)</sup>		\$838,769	Base Cost	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$31,549	\$0
		\$41,938	Allocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,577	\$0
Cumulative Grand Total Minus FTA Ineligible Costs			Base Cost	\$1,511,360	\$3,022,721	\$4,535,698	\$6,302,022	\$6,475,999	\$6,667,333	\$6,838,475	\$6,925,440	\$660
			Allocated Contingency	\$8,421	\$16,843	\$25,427	\$58,906	\$60,145	\$63,130	\$64,084	\$63,167	\$660
Cumulative Grand Total			Base Cost	\$1,511,360	\$3,022,721	\$4,535,698	\$6,302,022	\$6,475,999	\$6,667,333	\$6,838,475	\$6,956,989	\$660
			Allocated Contingency	\$8,421	\$16,843	\$25,427	\$58,906	\$60,145	\$63,130	\$64,084	\$64,744	\$660

Unallocated Contingency												
SCC Category		Total From Right	2017 Q1	2017 Q2	2017 Q3	2017 Q4	2018 Q1	2018 Q2	2018 Q3	2018 Q4		
10	GUIDEWAY & TRACK ELEMENTS (route miles)	\$7,224,055	Unallocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20	STATIONS, STOPS, TERMINALS, INTERMODAL (number)	\$2,978,149	Unallocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$19,638	Unallocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40	SITWORK & SPECIAL CONDITIONS	\$3,830,178	Unallocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
50	SYSTEMS	\$9,157,640	Unallocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
60	ROW, LAND, EXISTING IMPROVEMENTS	\$2,847,241	Unallocated Contingency	\$0	\$0	\$108	\$16,682	\$190	\$1,354	\$0	\$0	\$0
80	PROFESSIONAL SERVICES (applies to Cats. 10-50)	\$2,575,260	Unallocated Contingency	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grand Total		\$28,632,161	Unallocated Contingency	\$0	\$0	\$108	\$16,682	\$190	\$1,354	\$0	\$0	\$0
Cumulative Total			Unallocated Contingency	\$0	\$0	\$108	\$16,790	\$16,981	\$18,335	\$18,335	\$18,335	\$18,335
Cumulative Project Contingency Total			All Contingency	\$8,421	\$16,843	\$25,535	\$75,697	\$77,126	\$81,465	\$82,419	\$83,079	\$83,079
Remaining Project Contingency			All Contingency	\$83,409,972	\$83,401,550	\$83,392,858	\$83,342,696	\$83,341,267	\$83,336,928	\$83,335,974	\$83,335,314	\$83,335,314
Project Grand Total (Excl. IFA/RDA Advisor Costs, Finance Costs)		\$415,982,597		\$1,519,782	\$1,519,782	\$1,521,669	\$1,816,486	\$175,406	\$195,673	\$172,095	\$119,174	\$119,174
Cumulative Project Grand Total				\$1,519,782	\$3,039,564	\$4,561,233	\$6,377,719	\$6,553,125	\$6,748,798	\$6,920,894	\$7,040,067	\$7,040,067

<sup>(1)</sup> Project Development as described by FTA expired on 11/13/2018 and Entry to Engineering is expected to be approved on 11/15/2019. Project costs that occur between these two milestone dates are considered ineligible for FTA reimbursement. As these dates fall midway through Q4 2018 and Q4 2019 respectively, the cash flow exhibit reflects a partial allocation of ineligible costs during these quarters. This cost allocation methodology spreads contingency within each cost category, since contingency is not something that is typically "cash flowed" which results in an inconsistency in the allocation between "base" and "allocated contingency". As a result, all costs expected to be expended during Q1, Q2 and Q3 2019 are considered ineligible for FTA reimbursement, while Q4 2018 and Q4 2019 forecasts a partial allocation of those total costs as FTA ineligible costs.

Base Cost and Allocated Contingency		2019 Q1	2019 Q2	2019 Q3	2019 Q4	2020 Q1	2020 Q2	2020 Q3	2020 Q4	2021 Q1	2021 Q2	2021 Q3	2021 Q4
10	GUIDEWAY & TRACK ELEMENTS (route miles)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$394,332	\$5,515,680	\$11,976,498
20	STATIONS, STOPS, TERMINALS, INTERMODAL (number)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$78,866	\$1,680,358	\$2,610,047
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,489,075	\$2,978,149	\$2,978,149
40	SITWORK & SPECIAL CONDITIONS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$223,361	\$446,722	\$446,722
50	SYSTEMS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$9,819	\$19,638	\$19,638
60	ROW, LAND, EXISTING IMPROVEMENTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,473	\$2,946	\$2,946
80	PROFESSIONAL SERVICES (applies to Cats. 10-50)	\$86,115	\$86,115	\$611,134	\$2,200,844	\$3,912,657	\$3,912,657	\$3,912,657	\$3,912,657	\$3,912,657	\$2,095,973	\$3,694,248	\$3,694,248
Grand Total		\$480	\$480	\$11,731	\$301,178	\$554,518	\$554,518	\$554,518	\$554,518	\$554,518	\$299,594	\$539,335	\$539,335
FTA Ineligible Costs		\$82,471	\$82,471	\$530,071	\$112,206	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cumulative Grand Total Minus FTA Ineligible Costs		\$4,124	\$4,124	\$26,504	\$5,610	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cumulative Grand Total		\$6,929,083	\$6,932,727	\$7,013,791	\$10,629,711	\$19,066,649	\$28,012,525	\$37,165,376	\$45,767,469	\$54,562,205	\$77,657,277	\$107,090,419	\$144,364,743
		\$59,523	\$55,879	\$41,106	\$519,644	\$2,276,174	\$3,554,655	\$4,850,607	\$6,063,451	\$7,299,373	\$10,589,874	\$16,409,778	\$23,243,431
		\$7,043,104	\$7,129,219	\$7,740,353	\$11,468,479	\$19,905,417	\$28,851,294	\$38,004,145	\$46,606,238	\$55,400,973	\$78,496,045	\$107,929,187	\$145,203,511
		\$65,224	\$65,704	\$77,434	\$561,583	\$2,318,113	\$3,596,593	\$4,892,546	\$6,105,389	\$7,341,311	\$10,631,813	\$16,451,716	\$23,285,370

Unallocated Contingency		2019 Q1	2019 Q2	2019 Q3	2019 Q4	2020 Q1	2020 Q2	2020 Q3	2020 Q4	2021 Q1	2021 Q2	2021 Q3	2021 Q4
10	GUIDEWAY & TRACK ELEMENTS (route miles)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$39,433	\$551,568	\$1,197,650
20	STATIONS, STOPS, TERMINALS, INTERMODAL (number)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$148,907	\$297,815	\$297,815
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$982	\$1,964	\$1,964
40	SITWORK & SPECIAL CONDITIONS	\$0	\$0	\$0	\$0	\$82,144	\$74,184	\$101,725	\$84,937	\$84,937	\$618,125	\$918,913	\$465,400
50	SYSTEMS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$212,224	\$1,354,687
60	ROW, LAND, EXISTING IMPROVEMENTS	\$0	\$0	\$0	\$121,980	\$295,736	\$342,741	\$337,276	\$306,696	\$322,082	\$780,977	\$321,418	\$0
80	PROFESSIONAL SERVICES (applies to Cats. 10-50)	\$0	\$0	\$2,882	\$106,959	\$198,408	\$198,408	\$198,408	\$198,408	\$198,408	\$110,349	\$190,263	\$190,263
Grand Total		\$0	\$0	\$2,882	\$228,939	\$576,288	\$615,333	\$637,408	\$590,041	\$605,427	\$1,698,774	\$2,494,164	\$3,507,779
Cumulative Total		\$18,335	\$18,335	\$21,217	\$250,156	\$826,444	\$1,441,778	\$2,079,186	\$2,669,227	\$3,274,654	\$4,973,427	\$7,467,591	\$10,975,370
Cumulative Project Contingency Total		\$83,559	\$84,039	\$98,652	\$811,739	\$3,144,557	\$5,038,371	\$6,971,732	\$8,774,616	\$10,615,965	\$15,605,240	\$23,919,308	\$34,260,739
Remaining Project Contingency		\$83,334,834	\$83,334,354	\$83,319,742	\$82,606,654	\$80,273,836	\$78,380,022	\$76,446,661	\$74,643,777	\$72,802,428	\$67,813,153	\$59,499,085	\$49,157,654
Project Grand Total (Excl. IFA/RDA Advisor Costs, Finance Costs)		\$86,595	\$86,595	\$625,747	\$4,441,213	\$10,769,756	\$10,839,690	\$11,086,212	\$10,404,977	\$10,636,085	\$28,084,347	\$37,747,210	\$47,615,756
Cumulative Project Grand Total		\$7,126,662	\$7,213,257	\$7,839,005	\$12,280,218	\$23,049,974	\$33,889,665	\$44,975,877	\$55,380,854	\$66,016,938	\$94,101,285	\$131,848,495	\$179,464,251



In addition to the Double Track Project construction costs set forth above, the RDA/IFA Project Costs for the Double Track Project are \$20,000,000.00 and shall be paid as Project Costs from the proceeds of the IFA Bonds and/or FFGA funds (for the latter, to the extent permissible).

In addition to the RDA/IFA Project Costs, IFA has projected interest on the IFA Bonds for the Double Track Project during the term of the federal grant in the amount of \$42,500,000, which IFA expects will be paid from sources other than the proceeds of the IFA Bonds.

The Parties agree that the RDA/IFA Project Costs and the allowable interest will be included in the FTA Financial Plan for the Double Track Project to the extent permitted by the FTA CIG Program.

**EXHIBIT 3B**

**West Lake Corridor Project Cost Budget**

The Parties agree that this Exhibit constitutes the West Lake Corridor Project Cost Budget. The obligations of IFA and RDA to fund and finance Project Costs are limited to the amounts set forth in this Cost Budget, which may be subsequently amended in writing by agreement of the Parties, and by the terms of the applicable Financing Plan and the Governance Agreement.

Base Cost and Allocated Contingency														
SCC Category		Total From Right	2016 Q4	2017 Q1	2017 Q2	2017 Q3	2017 Q4	2018 Q1	2018 Q2	2018 Q3	2018 Q4			
10	GUIDEWAY & TRACK ELEMENTS (route miles) Total	\$164,471,707	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$41,117,927	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20	STATIONS, STOPS, TERMINALS, INTERMODAL (number) Total	\$18,492,257	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$4,623,064	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS Total	\$45,056,809	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$11,396,516	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40	SITWORK & SPECIAL CONDITIONS Total	\$125,232,777	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$33,974,113	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
50	SYSTEMS Total	\$52,764,125	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$13,191,031	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
60	ROW, LAND, EXISTING IMPROVEMENTS Total	\$57,607,662	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$11,777,919	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
70	VEHICLES (number) Total	\$30,540,535	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$166,195	\$0
		\$6,108,107	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$33,239	\$0
80	PROFESSIONAL SERVICES (applies to Cats. 10-50) Total	\$126,119,929	\$3,602,261	\$3,692,497	\$3,465,079	\$3,465,079	\$3,465,079	\$3,457,055	\$106,115	\$106,115	\$106,115	\$106,115	\$106,115	\$106,115
		\$25,262,314	\$23,094	\$23,673	\$22,215	\$22,215	\$22,215	\$22,163	\$680	\$680	\$680	\$680	\$680	\$680
Grand Total		\$620,285,801	\$3,602,261	\$3,692,497	\$3,465,079	\$3,465,079	\$3,465,079	\$3,457,055	\$106,115	\$106,115	\$106,115	\$106,115	\$272,310	\$272,310
		\$147,450,992	\$23,094	\$23,673	\$22,215	\$22,215	\$22,215	\$22,163	\$680	\$680	\$680	\$680	\$33,919	\$33,919
Cumulative Grand Total			\$3,602,261	\$7,294,758	\$10,759,837	\$14,224,916	\$17,689,995	\$21,147,050	\$21,253,165	\$21,359,279	\$21,631,589	\$21,631,589	\$170,856	\$170,856
			\$23,094	\$46,767	\$68,982	\$91,197	\$113,412	\$135,576	\$136,256	\$136,936	\$136,936	\$136,936	\$170,856	\$170,856

Unallocated Contingency														
SCC Category		Total From Right	2016 Q4	2017 Q1	2017 Q2	2017 Q3	2017 Q4	2018 Q1	2018 Q2	2018 Q3	2018 Q4			
10	GUIDEWAY & TRACK ELEMENTS (route miles)	\$16,447,171	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20	STATIONS, STOPS, TERMINALS, INTERMODAL (number)	\$1,849,226	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$4,505,681	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40	SITWORK & SPECIAL CONDITIONS	\$12,523,278	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
50	SYSTEMS	\$5,276,413	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
60	ROW, LAND, EXISTING IMPROVEMENTS	\$4,907,466	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
70	VEHICLES (number)	\$3,054,053	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$16,619	\$0
80	PROFESSIONAL SERVICES (applies to Cats. 10-50)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grand Total		\$48,563,287	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$16,619	\$16,619
Cumulative Total			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$16,619	\$16,619

Cumulative Project Contingency Total		All Contingency	\$23,094	\$46,767	\$68,982	\$91,197	\$113,412	\$135,576	\$136,256	\$136,936	\$136,936	\$187,475	\$187,475
Remaining Project Contingency		All Contingency	\$195,991,185	\$195,967,512	\$195,945,297	\$195,923,082	\$195,900,867	\$195,878,703	\$195,878,023	\$195,877,343	\$195,877,343	\$195,826,804	\$195,826,804
Project Grand Total (Excl. IFA/RDA Advisor Costs, Finance Costs)			\$816,300,080	\$3,625,355	\$7,341,525	\$10,828,819	\$14,316,113	\$17,803,407	\$21,282,625	\$21,389,421	\$21,496,216	\$21,819,064	\$21,819,064
Cumulative Project Grand Total				\$3,625,355	\$7,341,525	\$10,828,819	\$14,316,113	\$17,803,407	\$21,282,625	\$21,389,421	\$21,496,216	\$21,819,064	\$21,819,064

Base Cost and Allocated Contingency		2019 Q1	2019 Q2	2019 Q3	2019 Q4	2020 Q1	2020 Q2	2020 Q3	2020 Q4	2021 Q1	2021 Q2	2021 Q3	2021 Q4
10	GUIDEWAY & TRACK ELEMENTS (route miles) Total	\$0	\$0	\$0	\$0	\$0	\$0	\$171,297	\$22,495,101	\$26,846,411	\$16,789,764	\$16,789,764	\$22,152,508
		\$0	\$0	\$0	\$0	\$0	\$0	\$42,824	\$5,623,775	\$6,711,603	\$4,197,441	\$4,197,441	\$5,538,127
20	STATIONS, STOPS, TERMINALS, INTERMODAL (number) Total	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,849,226	\$3,698,451	\$3,698,451	\$1,849,226
		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$462,306	\$924,613	\$924,613	\$462,306
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS Total	\$0	\$0	\$0	\$0	\$72,834	\$72,834	\$177,099	\$861,111	\$748,595	\$8,630,296	\$8,661,699	\$6,469,195
		\$0	\$0	\$0	\$0	\$19,352	\$19,352	\$47,055	\$228,798	\$198,902	\$2,178,054	\$2,186,397	\$1,632,603
40	SITWORK & SPECIAL CONDITIONS Total	\$0	\$0	\$0	\$624,789	\$1,948,605	\$5,170,977	\$13,654,956	\$14,121,632	\$9,912,689	\$17,702,099	\$17,990,135	\$6,598,332
		\$0	\$0	\$0	\$156,197	\$549,714	\$1,506,193	\$3,810,526	\$3,874,726	\$2,643,823	\$4,638,657	\$4,710,908	\$1,785,703
50	SYSTEMS Total	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,377,226	\$5,276,413	\$7,175,599	\$7,175,599	\$7,704,046
		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$844,307	\$1,319,103	\$1,793,900	\$1,793,900	\$1,926,011
60	ROW, LAND, EXISTING IMPROVEMENTS Total	\$419,177	\$1,349,573	\$5,850,934	\$6,991,778	\$11,425,902	\$12,301,319	\$16,549,563	\$2,719,416	\$0	\$0	\$0	\$0
		\$80,346	\$278,194	\$1,206,082	\$1,441,250	\$2,355,278	\$2,535,732	\$3,320,470	\$560,567	\$0	\$0	\$0	\$0
70	VEHICLES (number) Total	\$309,349	\$571,857	\$2,530,711	\$571,857	\$982,297	\$982,297	\$3,556,337	\$3,886,900	\$3,886,900	\$3,283,986	\$2,941,151	\$982,297
		\$61,870	\$114,371	\$506,142	\$114,371	\$196,459	\$196,459	\$711,267	\$777,380	\$777,380	\$656,797	\$588,230	\$196,459
80	PROFESSIONAL SERVICES (applies to Cats. 10-50) Total	\$731,362	\$901,205	\$1,931,585	\$2,192,060	\$2,318,510	\$9,775,406	\$10,991,324	\$10,991,324	\$10,986,726	\$8,058,291	\$4,504,716	\$4,348,431
		\$66,894	\$150,913	\$500,353	\$565,472	\$597,084	\$2,502,235	\$2,844,202	\$2,844,202	\$2,843,052	\$1,994,513	\$989,689	\$950,618
Grand Total		\$1,459,888	\$2,822,636	\$10,313,230	\$10,380,483	\$16,748,148	\$28,302,833	\$45,100,576	\$58,452,711	\$59,506,959	\$65,338,486	\$61,761,515	\$50,104,034
Cumulative Grand Total		\$209,109	\$543,479	\$2,212,577	\$2,277,290	\$3,717,887	\$6,759,972	\$10,776,345	\$14,753,755	\$14,956,169	\$16,383,975	\$15,391,179	\$12,491,828
		\$23,091,477	\$25,914,112	\$36,227,342	\$46,607,826	\$63,355,974	\$91,658,806	\$136,759,383	\$195,212,094	\$254,719,052	\$320,057,538	\$381,819,053	\$431,923,087
		\$379,965	\$923,443	\$3,136,021	\$5,413,311	\$9,131,198	\$15,891,170	\$26,667,515	\$41,421,269	\$56,377,439	\$72,761,414	\$88,152,593	\$100,644,421

Unallocated Contingency		2019 Q1	2019 Q2	2019 Q3	2019 Q4	2020 Q1	2020 Q2	2020 Q3	2020 Q4	2021 Q1	2021 Q2	2021 Q3	2021 Q4
10	GUIDEWAY & TRACK ELEMENTS (route miles)	\$0	\$0	\$0	\$0	\$0	\$0	\$17,130	\$2,249,510	\$2,684,641	\$1,678,976	\$1,678,976	\$2,215,251
20	STATIONS, STOPS, TERMINALS, INTERMODAL (number)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$184,923	\$369,845	\$369,845	\$184,923
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$0	\$0	\$0	\$0	\$7,283	\$7,283	\$17,710	\$86,111	\$74,859	\$863,030	\$866,170	\$646,919
40	SITWORK & SPECIAL CONDITIONS	\$0	\$0	\$0	\$62,479	\$194,861	\$517,098	\$1,365,496	\$1,412,163	\$991,269	\$1,770,210	\$1,799,013	\$659,833
50	SYSTEMS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$337,723	\$527,641	\$717,560	\$717,560	\$770,405
60	ROW, LAND, EXISTING IMPROVEMENTS	\$33,477	\$115,914	\$502,534	\$600,521	\$981,366	\$1,056,555	\$1,383,529	\$233,569	\$0	\$0	\$0	\$0
70	VEHICLES (number)	\$30,935	\$57,186	\$253,071	\$57,186	\$98,230	\$98,230	\$355,634	\$388,690	\$388,690	\$328,399	\$294,115	\$98,230
80	PROFESSIONAL SERVICES (applies to Cats. 10-50)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grand Total		\$64,412	\$173,100	\$755,605	\$720,185	\$1,281,739	\$1,679,166	\$3,139,498	\$4,707,767	\$4,852,023	\$5,728,020	\$5,725,680	\$4,575,560
Cumulative Total		\$81,032	\$254,132	\$1,009,737	\$1,729,923	\$3,011,662	\$4,690,828	\$7,830,326	\$12,538,092	\$17,390,116	\$23,118,135	\$28,843,815	\$33,419,375
Cumulative Project Contingency Total		\$460,997	\$1,177,575	\$4,145,758	\$7,143,234	\$12,142,860	\$20,581,998	\$34,497,841	\$53,959,362	\$73,767,555	\$95,879,549	\$116,996,408	\$134,063,796
Remaining Project Contingency		\$195,553,282	\$194,836,704	\$191,868,521	\$188,871,045	\$183,871,419	\$175,432,281	\$161,516,438	\$142,054,917	\$122,246,724	\$100,134,730	\$79,017,871	\$61,950,483
Project Grand Total (Excl. IFA/RDA Advisor Costs, Finance Costs)		\$1,733,409	\$3,539,214	\$13,281,413	\$13,377,959	\$21,747,775	\$36,741,970	\$59,016,419	\$77,914,232	\$79,315,151	\$87,450,481	\$82,878,373	\$67,171,423
Cumulative Project Grand Total		\$23,552,473	\$27,091,687	\$40,373,100	\$53,751,059	\$75,498,834	\$112,240,805	\$171,257,224	\$249,171,456	\$328,486,607	\$415,937,088	\$498,815,461	\$565,986,883

Base Cost and Allocated Contingency		2022 Q1	2022 Q2	2022 Q3	2022 Q4	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024 Q1	2024 Q2	2024 Q3	2024 Q4	2025 Q1	2025 Q2
SCC Category															
10	GUIDEWAY & TRACK ELEMENTS (route miles) Total	\$21,981,211	\$13,928,922	\$13,928,922	\$2,346,952	\$2,346,952	\$2,346,952	\$2,346,952	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$5,495,303	\$3,482,231	\$3,482,231	\$586,738	\$586,738	\$586,738	\$586,738	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20	STATIONS, STOPS, TERMINALS, INTERMODAL (number) Total	\$1,849,226	\$1,849,226	\$924,613	\$924,613	\$924,613	\$924,613	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$462,306	\$462,306	\$231,153	\$231,153	\$231,153	\$231,153	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS Total	\$6,468,527	\$6,283,035	\$6,283,035	\$205,748	\$122,803	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$1,632,426	\$1,583,140	\$1,583,140	\$54,667	\$32,629	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40	SITWORK & SPECIAL CONDITIONS Total	\$6,598,332	\$9,237,470	\$9,237,470	\$3,859,597	\$2,738,173	\$2,738,173	\$3,099,350	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$1,785,703	\$2,489,994	\$2,489,994	\$1,080,741	\$782,666	\$782,666	\$885,903	\$0	\$0	\$0	\$0	\$0	\$0	\$0
50	SYSTEMS Total	\$7,704,046	\$5,486,986	\$5,486,986	\$1,688,613	\$1,688,613	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$1,926,011	\$1,371,746	\$1,371,746	\$422,153	\$422,153	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
60	ROW, LAND, EXISTING IMPROVEMENTS Total	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
70	VEHICLES (number) Total	\$982,297	\$982,297	\$1,340,472	\$982,297	\$400,259	\$400,259	\$400,259	\$400,259	\$0	\$0	\$0	\$0	\$0	\$0
		\$196,459	\$196,459	\$268,094	\$196,459	\$80,052	\$80,052	\$80,052	\$80,052	\$0	\$0	\$0	\$0	\$0	\$0
80	PROFESSIONAL SERVICES (applies to Cats. 10-50) Total	\$4,268,239	\$4,268,239	\$4,268,239	\$4,268,239	\$4,246,913	\$5,217,816	\$5,217,816	\$2,223,276	\$1,036,734	\$1,036,734	\$871,350	\$0	\$0	\$0
		\$930,570	\$930,570	\$930,570	\$930,570	\$925,238	\$1,167,964	\$1,167,964	\$555,819	\$259,183	\$259,183	\$217,838	\$0	\$0	\$0
Grand Total		\$49,851,878	\$42,036,174	\$41,469,736	\$14,276,059	\$12,468,325	\$11,627,812	\$11,064,376	\$2,623,535	\$1,036,734	\$1,036,734	\$871,350	\$0	\$0	\$0
		\$12,428,779	\$10,516,447	\$10,356,929	\$3,502,482	\$3,060,629	\$2,848,573	\$2,720,657	\$635,871	\$259,183	\$259,183	\$217,838	\$0	\$0	\$0
Cumulative Grand Total		\$481,774,965	\$523,811,139	\$565,280,876	\$579,556,934	\$592,025,259	\$603,653,071	\$614,717,448	\$617,340,983	\$618,377,717	\$619,414,451	\$620,285,801	\$620,285,801	\$620,285,801	\$620,285,801
		\$113,073,199	\$123,589,647	\$133,946,575	\$137,449,058	\$140,509,687	\$143,358,260	\$146,078,916	\$146,714,787	\$146,973,971	\$147,233,154	\$147,450,992	\$147,450,992	\$147,450,992	\$147,450,992

Unallocated Contingency		2022 Q1	2022 Q2	2022 Q3	2022 Q4	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024 Q1	2024 Q2	2024 Q3	2024 Q4	2025 Q1	2025 Q2
SCC Category															
10	GUIDEWAY & TRACK ELEMENTS (route miles)	\$2,198,121	\$1,392,892	\$1,392,892	\$234,695	\$234,695	\$234,695	\$234,695	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20	STATIONS, STOPS, TERMINALS, INTERMODAL (number)	\$184,923	\$184,923	\$92,461	\$92,461	\$92,461	\$92,461	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
30	SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	\$646,853	\$628,303	\$628,303	\$20,575	\$12,280	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40	SITWORK & SPECIAL CONDITIONS	\$659,833	\$923,747	\$923,747	\$385,960	\$273,817	\$273,817	\$309,935	\$0	\$0	\$0	\$0	\$0	\$0	\$0
50	SYSTEMS	\$770,405	\$548,699	\$548,699	\$168,861	\$168,861	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
60	ROW, LAND, EXISTING IMPROVEMENTS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
70	VEHICLES (number)	\$98,230	\$98,230	\$134,047	\$98,230	\$40,026	\$40,026	\$40,026	\$40,026	\$0	\$0	\$0	\$0	\$0	\$0
80	PROFESSIONAL SERVICES (applies to Cats. 10-50)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Grand Total		\$4,558,364	\$3,776,794	\$3,720,150	\$1,000,782	\$822,141	\$641,000	\$584,656	\$40,026	\$0	\$0	\$0	\$0	\$0	\$0
Cumulative Total		\$37,977,739	\$41,754,533	\$45,474,682	\$46,475,464	\$47,297,606	\$47,938,605	\$48,523,261	\$48,563,287	\$48,563,287	\$48,563,287	\$48,563,287	\$48,563,287	\$48,563,287	\$48,563,287

Cumulative Project Contingency Total		\$151,050,939	\$165,344,179	\$179,421,258	\$183,924,522	\$187,807,292	\$191,296,865	\$194,602,178	\$195,278,075	\$195,537,258	\$195,796,441	\$196,014,279	\$196,014,279	\$196,014,279	\$196,014,279
Remaining Project Contingency		\$44,963,340	\$30,670,100	\$16,593,021	\$12,089,757	\$8,206,987	\$4,717,414	\$1,412,101	\$736,204	\$477,021	\$217,838	\$0	\$0	\$0	\$0

Project Grand Total (Excl. IFA/RDA Advisor Costs, Finance Costs)		\$66,839,020	\$56,329,415	\$55,546,815	\$18,779,323	\$16,351,095	\$15,117,385	\$14,369,689	\$3,299,432	\$1,295,917	\$1,295,917	\$1,089,188	\$0	\$0	\$0
Cumulative Project Grand Total		\$632,825,904	\$689,155,319	\$744,702,134	\$763,481,456	\$779,832,552	\$794,949,936	\$809,319,626	\$812,619,058	\$813,914,975	\$815,210,893	\$816,300,080	\$816,300,080	\$816,300,080	\$816,300,080

In addition to the West Lake Corridor Project construction costs set forth above, the RDA/IFA Project Costs for the West Lake Corridor Project are \$20,000,000.00 and shall be paid as Project Costs from the proceeds of the IFA Bonds and/or FFGA funds (for the latter, to the extent permissible).

In addition to the RDA/IFA Project Costs, IFA has projected interest on the IFA Bonds for the West Lake Corridor Project during the term of the federal grant in the amount of \$116,600,000, which IFA expects will be paid from sources other than the proceeds of the IFA Bonds.

The Parties agree that the RDA/IFA Project Costs and the allowable interest will be included in the FTA Financial Plan for the West Lake Corridor Project to the extent permitted by the FTA CIG Program.

**EXHIBIT 4A**

**Double Track Project Schedule**

<b><u>Major Milestones</u></b>	<b><u>Start Date</u></b>	<b><u>End Date</u></b>
Project Development Phase (1 <sup>st</sup> Major CIG Requirement)	05/13/16	11/13/18
Entry into Engineering (2 <sup>nd</sup> Major CIG Requirement)	06/28/19	11/14/19
Interim Project Rating	-----	11/15/19
Project Rating (Overall Medium Rating or Higher)	-----	02/11/20
FFGA Negotiation and Execution (3 <sup>rd</sup> Major CIG Requirement)	12/21/20	06/01/21
Real Estate Acquisition	11/18/19	07/01/21
Third Party Agreements Negotiation and Execution	11/01/18	11/01/19
Construction Contract Bid Process	02/23/21	06/30/21
Construction Contract Award	07/01/21	07/30/21
Construction Contract Notice to Proceed	-----	08/20/21
Construction Substantial Completion	-----	08/31/23
Utility Relocation Process	08/23/21	10/25/22
Production of Rolling Stock	01/07/21	12/15/23
Commissioning and Testing	05/23/22	03/04/24
Revenue Service Operations	03/05/24	-----
Project Close-out	03/05/24	08/29/24

**EXHIBIT 4B**

**West Lake Corridor Project Schedule**

<b><u>Major Milestones</u></b>	<b><u>Start Date</u></b>	<b><u>End Date</u></b>
Project Development Phase (1 <sup>st</sup> Major CIG Requirement)	09/28/16	03/28/19
Entry into Engineering (2 <sup>nd</sup> Major CIG Requirement)	09/04/18	08/01/19
Project Rating (Medium High)	-----	03/15/19
FFGA Negotiation and Execution (3 <sup>rd</sup> Major CIG Requirement)	02/19/20	07/02/20
Real Estate Acquisition	01/09/19	12/31/20
Third Party Agreements Negotiation and Execution	12/18/17	02/28/20
D/B RFQ and Shortlist	03/22/19	06/24/19
D/B RFP Issuance	-----	07/02/19
D/B Contract Award	-----	02/20/20
D/B Contract Notice to Proceed	-----	08/05/20
D/B Substantial Completion	11/21/23	08/05/24
Utility Relocation Process	04/03/20	12/17/21
Rehabilitation of Rolling Stock	12/31/18	02/20/24
Completion of Eight Cars of Rolling Stock for Testing	-----	01/21/20
Commissioning and Testing	11/21/23	08/05/24
Revenue Service Operations	02/04/25	-----
Project Close-out	02/05/25	07/22/25

**EXHIBIT 5A**

**Double Track Financing Plan**

The Financing Plan (this "Financing Plan") for the Double Track Project (the "DT") is set forth herein. A similar financing plan for the West Lake Corridor Project ((the "WLC") and collectively, with DT, the "Rail Projects") is set forth within Exhibit 5B. Subject to IC 5-1.3, the RDA is the exclusive fiscal officer for the Rail Projects and has final approval for financing a Rail Project pursuant to IC 36-7.5-4-18. IC 5-1.3 and related amendments (the "Bond Act") have been enacted to provide specific statutory authority for IFA, RDA and NICTD to complete the Financing Plan and for dedication of the obligations of the State and the RDA with respect thereto, which may be used to finance the DT, depending upon the sequencing of the review and approval of the Federal Transit Administration ("FTA"). RDA and the IFA have no obligation to fund or finance the Rail Projects other than as specifically set forth herein.

IFA, RDA, NICTD, and a trustee bank serving as trustee under the bonds issued by IFA as described below, will execute with a trustee bank (the "Deposit Trustee") a Revenue Trust Fund Agreement (the "Trust Fund Agreement") pursuant to which all such entities will agree to deposit proceeds, funds and revenues received by them for the Rail Projects into the respective funds, accounts, and subaccounts held by the Deposit Trustee under the Trust Fund Agreement ("Revenue Trust Fund"), including FTA grant proceeds received in reimbursement for Rail Project expenditures. The revenues received by the Deposit Trustee will be used to pay any bonds issued by IFA as described below, including any grant anticipation notes IFA may issue to provide interim funding for the Rail Projects and direct project costs.

The following funding sources for the DT described in this Financing Plan are designed in part to provide the local governmental unit share pursuant to 49 U.S.C. 5309(d) and 49 C.F.R. 611.205 (the "Local Governmental Funding Share"). These funding sources will be elaborated in the subsequent paragraphs. A commonly drafted lease financing structure will be used for all of the bonds issued by IFA (the "IFA Bonds") as described below. The RDA, NICTD and the IFA have adopted resolutions to authorize or approve, as applicable: (1) the ground lease, pursuant to which NICTD (the owner of the existing facilities) will lease to the RDA the interests of NICTD in such facilities, including any assets or properties acquired by NICTD hereinafter for the DT, except as provided in the Amended and Restated Governance Agreement among RDA, NICTD and IFA (the "Amended Governance Agreement"); (2) the underlying lease, pursuant to which the RDA will lease to the IFA such lease interests obtained from NICTD, to provide IFA the property interests sufficient to finance the DT; (3) the master financing leases, pursuant to which the IFA will lease the DT to the RDA during and after construction of the DT and will provide for the repayment of the Bonds from payments described herein (the "Master Leases"); and (4) the operating lease from RDA to NICTD of the DT so that NICTD can complete the construction of the DT and thereafter to operate and maintain the DT, subject to the provisions of the Amended Governance Agreement (collectively, the "Leases").

The IFA Bonds will be paid from the various rental payments made by the RDA to the IFA pursuant to the respective Master Leases.

- 1) State Funded Bonds/Contributions. IFA has taken action to approve the issuance of the following IFA Bonds:
  - a. The first type of IFA Bonds for DT will consist of the draw down bonds pursuant to IC 5-13-10.5-20 (the “DT Draw Down”). The Indiana General Assembly provided for additional funding to be accessed to maintain progress on the Rail Projects. A portion of this money will be accessed for DT. \$185,000,000 is available from the Next Level Connection Fund (the “NLCF”) under the Northern Indiana Commuter Rail Account (the “NLCF Rail Account”). An additional \$20,000,000 is available to be transferred into the NLCF Rail Account upon Governor’s approval. The IFA must submit a request to the treasurer of state in order to access the funds. The maximum principal amount of the bonds is \$205,000,000 for the Rail Projects. It is expected that approximately \$81,200,000 will be utilized for DT.
  - b. The second type of IFA Bonds for DT shall consist of lease rental subject-to-appropriation bonds (the “IFA Appropriations Bonds”) that will provide funding based upon market conditions and bond structuring at the time of issuance. In 2015, 2017 and 2019 legislation, the Indiana legislature specifically identified the annual appropriations the State planned to use to assist the RDA and NICTD in the financing of the Rail Projects using the lease financing structure set forth in the Bond Act. Specifically, as shown in Exhibit A, in 2015 the State commenced appropriating \$6,000,000 million per year for WLC, in 2017 the State commenced appropriating in the combined amount of \$12 million per year for the Rail Projects to pay to the RDA the annual lease payments described below, and in 2019, the State continue to appropriate \$12 million per year. The IFA has adopted a resolution to authorize the issuance of one or more series of bonds and notes to finance the DT using the provisions of the Bond Act and the Leases. The rental payments owed by the RDA to the IFA under the respective Master Lease shall be subject to appropriations from the General Assembly to the RDA as lessee. Attached hereto as Exhibit B is a report of IFA's financial advisor (the "FA Report") estimating that approximately \$87,100,000 of funding for the DT should be expected from the proceeds of the IFA appropriation bonds. The amount of funding for the DT will be determined on the date of sale of these IFA Bonds based upon market conditions and final structuring payable only from an estimated \$5.5 million of the \$12.0 million in appropriations described above in each of 29 years. IFA, RDA, and the State's sole obligation with respect to the amount of funding provided from the IFA Appropriation Bonds is to dedicate those annual appropriations pledged to the IFA Appropriation Bonds for the DT through the State’s fiscal year 2050 or until all obligations are paid. The proceeds of the IFA Appropriation Bonds will be deposited into the IFA Appropriation Project Account of the Project Fund established pursuant to the Trust Fund Agreement with respect to the DT.

- c. The third type of IFA Bonds for DT shall consist of notes (the “IFA GANS”) that will be issued by IFA pursuant to the Bond Act and the Leases as needed to fund expenditures on the DT pending receipt of FTA grants using the Leases. The Indiana General Assembly created the Next Generation Trust Fund pursuant to IC 8-14-15.2 (the “Fund”). In particular, pursuant to IC 8-14-15.2-10, the Fund may be used to make and secure lease rental payments due under the respective Master Lease that are payable from grant proceeds from the federal government, which lease rental payments will be used to pay the IFA GANS. The principal of the Fund is \$250,000,000. The FA Report estimates that approximately \$135,800,000 of funding for the DT should be expected from the IFA GANS. IFA, RDA and the State’s sole obligations with respect to the payment of the IFA GANS for DT are the grant proceeds received from the FTA and the moneys held in the Fund to the extent grant proceeds are insufficient to pay debt service. The proceeds of the IFA GANS will be deposited into the FTA Grant Reimbursement Project Account of the Project Fund established pursuant to the Trust Fund Agreement with respect to the DT.
  - d. Of the State appropriations referenced in subsection (b) above, the IFA and the State intends to utilize \$6,000,000 of State funds for DT as cash funding. In addition, \$4,700,000 of the NLCF funds referenced in subsection (a) above are expected to be utilized as cash funding after the receipt of the FTA’s Full Funding Grant Agreement (the "FFGA").
  - e. Notwithstanding anything stated in this Section (1), except as provided in subsection (a), IFA is not obligated to issue the IFA Appropriation Bonds or the IFA GANS or provide funding for DT until the FFGA for DT is executed, except as provided in Section 5.3 of the Amended Governance Agreement.
- 2) RDA Funds.
- a. An additional type of IFA Bonds (the “IFA RDA Member Dues Bonds”) for DT payable by RDA Master Lease rental payments from RDA Member Dues. For these IFA Bonds (the “IFA RDA Member Dues Bonds”), statutorily-prescribed taxes from the Lake County cities of East Chicago, Hammond and Gary and from Lake and Porter Counties (the "Members") payable to RDA from the Members will be available as the source of payment of lease rentals paid by RDA to IFA to pay the debt service on the IFA RDA Member Dues Bonds. Each Member is obligated to pay dues (the "Member Dues") annually to RDA. The Indiana General Assembly has provided that the State Treasurer withhold Member Dues before the remaining taxes due to the Members are distributed to the Members and transfer those withheld Member Dues to the RDA.
  - b. The RDA board has authorized the commitment in the approximate amount of \$2,200,000 million annually Member Dues to the RDA Master Lease rentals for the IFA RDA Member Dues Bonds. As set forth in Table 3: Double Track

Financing Overview included in Exhibit B hereof (“Table 3”), the annual amount is needed in order to provide approximately \$32,800,000 in proceeds for DT capital costs as projected in Table 3. The Member Dues set forth in Exhibit C shall constitute the sole source of payment of the IFA RDA Member Dues Bonds by the RDA

- c. The FA Report estimates that approximately \$32,800,000 of funding for DT capital costs projected in Table 3 should be expected from IFA RDA Member Dues Bonds. The amount of funding for the DT from the IFA RDA Member Dues Bonds will be determined on the date of sale of these Bonds based upon market conditions and final structuring. IFA, RDA and the State’s sole obligations with respect to the amount of funding for DT provided from the IFA RDA Member Dues Bonds is to make available the Member Dues as set forth in clause (b) above. The proceeds of the IFA RDA Member Dues Bonds will be deposited into the IFA RDA Member Project Account of the Project Fund established pursuant to the Trust Fund Agreement with respect to the DT.
- d. RDA has by resolution adopted on June 20, 2019 (the “RDA DT Resolution”), agreed to commit \$3,721,000 of cash funding to the DT, although as set forth in Table 3.
- e. Notwithstanding anything stated in this section (2), and except as provided in Section (1)(a), RDA is not obligated to enter into any Master Leases or provide funding for DT until the FFGA for DT is executed, except as provided in Section 5.3 of the Amended Governance Agreement.

### 3) Cash Participant Resolutions for DT

- a. Three northern Indiana units of government passed resolutions committing financial support to the DT (the “Cash Participant Resolutions”) (all attached as Exhibit D). In total, these Cash Participant Resolutions provide \$36,500,000 to the DT (the “Cash Participant Monies”).
  - i. The Michigan City Common Council passed Resolution No. 4679 which was signed by the Mayor on June 13, 2017 (the “Michigan City Resolution”). Under the Resolution, the Council committed to \$12,166,666.67 through the Redevelopment District as approved by the Redevelopment Commission (through Resolution No. 8-17, dated May 31, 2017), payable to the Revenue Trust Agreement for the DT. Under the Redevelopment Commission Resolution, the \$12,166,666.67 was committed and appropriated by the Commission (\$6,776,666.67 is from cash on hand from the “South Tax Increment Financing District”; and the remainder to be paid through the issuance of Bonds by the “South Tax Increment Financing District” in the amount of \$5,390,000.00) within 120 days upon receipt of written

notice that the RDA and IFA has each approved the Financing Plan for DT

- ii. The LaPorte County Council passed Resolution No. 2017-5 (the “LaPorte County Resolution”). Under the LaPorte County Resolution, the Council committed and appropriated \$6,083,333.33 to the Double Track Project to be paid as directed by the IFA within 120 days after the Financing Plan is agreed to by the RDA and the IFA; \$5,000,000.00 of which is to come from the LaPorte County’s Major Bridge Fund and \$1,083,333.33 to come from the special LIT distribution currently within the Emergency Reserve Fund.
- iii. On July 11, 2017, the St. Joseph County Council passed Resolution No. R7-17, Bill No. 60-17 (the “St. Joseph Resolution”). Under the St. Joseph Resolution, the Council committed and appropriated \$18,250,000 to be paid within 120 days after the financing plan is agreed to by the IFA and the RDA.
- iv. On June 20, 2019 the IFA and RDA each passed the Financing Plan for DT. Pursuant to the each of these Cash Participant Resolutions and under IC 36-7.5-4.5-16, as cash participants, the monies shall be deposited into the Revenue Trust Fund created by the IFA, RDA, and NICTD for the DT within 120 days of the passing of the Financing Plan. By Friday, October 18, 2019 the Cash Participant monies should be deposited into the Revenue Trust Fund. As a Cash Participant, the action taken under the Cash Participant Resolutions triggered the Councils to accept the state intercept provision under IC 36-7.5-4-16 and IC 36-7.5-4.5-16(d)(2) and the Cash Participant Resolutions are valid and binding under IC 6-3.6-11-7 and IC 5-1-14-4.
- v. The Parties agree to jointly and in good faith work to obtain the Cash Participant Monies as soon as practicable once the Amended Governance Agreement and Financing Plan are adopted by the Parties with the goal of securing such monies within 120 days of adoption of this Financing Plan and Amended Governance Agreement. The Parties will deposit the Cash Participant Monies into the Revenue Trust Fund.

#### 4) Maximum Principal Amounts of IFA Bonds.

The IFA has authorized the issuance of IFA Bonds in an aggregate principal amount not to exceed \$400,000,000 for DT.

#### 5) Initial Project Development Funding

At the outset of the Double Track Project a Preliminary Engineering and Environmental Study was needed as part of the Project Development phase. NICTD therefore reached out to Lake

County, Porter County, LaPorte County and St. Joseph County to help with funding that study. St. Joseph County provided \$800,000; Michigan City (LaPorte County) provided \$550,000; LaPorte County provided \$250,000; and the RDA provided \$1,600,000 on behalf of its members, Lake County and Porter County. In total, \$3,200,000 was invested into the initial Project Development.

6) Federal Funding.

- a. In addition to the federal grant proceeds to be used to repay the IFA GANS, the FA Report estimates that approximately \$25,000,000 of federal grant proceeds will be used to construct the DT prior to the issuance of the IFA GANS.

EXHIBIT A

State of Indiana Biennial Budget Appropriations to  
Northwest Indiana Regional Development Authority for the Rail Projects

House Enrolled Act 1001 – 2015

Budget Bill: Page 104 <https://iga.in.gov/static-documents/5/3/8/6/53861fe8/HB1001.05.ENRH.pdf>

	<i>FY 2015-2016 Appropriation</i>	<i>FY 2016-2017 Appropriation</i>	<i>Biennial Appropriation</i>
<b>FOR THE STATE BUDGET AGENCY</b>			
Aviation Technology Center			2,285,632
Airport Facilities Leases			40,136,288
Stadium Lease Rental			166,544,023
Convention Center Lease Rental			48,468,078
State Fair Lease Rental			8,524,426
Indiana Motorsports Commission			4,000,000
Northwest Indiana Regional Development Authority			12,000,000

House Enrolled Act 1001 – 2017

Budget Bill: Page 94 <https://iga.in.gov/static-documents/d/4/d/7/d4d75ee8/HB1001.06.ENRS.pdf>

	<i>FY 2017-2018 Appropriation</i>	<i>FY 2018-2019 Appropriation</i>	<i>Biennial Appropriation</i>
<b>FOR THE STATE BUDGET AGENCY</b>			
Airport Facilities Leases			29,548,602
Stadium Lease Rental			131,032,945
Convention Center Lease Rental			48,918,732
State Fair Lease Rental			8,536,075
Indiana Motorsports Commission			14,000,000
Northwest Indiana Reg. Dev. Authority	6,000,000	12,000,000	
White River State Park Commission			12,000,000

House Enrolled Act 1001 - 2019

Page 89: <http://iga.in.gov/static-documents/a/4/7/2/a47201d3/HB1001.06.ENRS.pdf>

	<i>FY 2019-2020 Appropriation</i>	<i>FY 2020-2021 Appropriation</i>	<i>Biennial Appropriation</i>
<b>FOR THE STATE BUDGET AGENCY</b>			
Stadium Lease Rental	66,397,560	68,540,540	
Convention Center Lease Rental	21,962,110	22,510,343	
State Fair Coliseum Lease Rental	4,049,338	4,047,738	
Indiana Motorsports Commission	7,000,000	7,000,000	
Northwest Indiana Reg. Dev. Authority	12,000,000	12,000,000	
Water Infrastructure Assistance	0	20,000,000	
First Responder Regional Training Pilot	0	250,000	

## EXHIBIT B

### Report of the Financial Advisor

PFM Financial Advisors LLC, with input and assistance from the IFA, RDA, NICTD and each entity's consultants have drafted a preliminary capital financing plan for the construction of the DT. The following discussion and tables outline the information provided upon which the preliminary capital financing plan is based, the assumptions utilized and the resulting cashflow. The capital cost estimate of \$455.2 million includes \$415.1 million of acquisition, construction, improvement and professional service costs and \$40.1 million of Project finance charges that are eligible for 38% reimbursement through the New Starts program. In addition, \$0.9 million of project costs are not eligible for reimbursement through the New Starts program. The Project finance charges were calculated based upon estimated bond interest through the term of the Federal Grant plus the costs of issuance related to the issuance of the bonds. It is currently anticipated that the IFA will issue four distinct types of debt for the DT based upon security and source of repayment – RDA Available Revenue-backed bonds, DT Draw Down bonds, State Appropriation-Backed bonds, and Grant Anticipation Notes (“GANs”) which will receive credit support from the State's Next Generation Trust Fund. We recognize that the Next Level Connections Fund monies will be initially provided through the purchase of DT Draw Down bonds. Given the forgivable nature of such draw-down bonds upon receipt of an FFGA, we have not included any assumptions with regards to financing charges or debt service on such DT Draw Down bonds.

Based upon a construction schedule developed by NICTD utilizing a 25% budget contingency, a financing plan was developed which utilized the committed local funding sources and Section 5309 Capital Investment Grant dollars on a PAY-GO basis until the pace of construction needs requires bonding. The following table summarizes the sources of funds and when they are deployed for funding construction.

**Table 1: Double Track Project Flow (YOES\$, in millions)**

FTA CIG Projects	2018 <sup>1</sup>	2019	2020	2021	2022	2023	2024	2025	Total
<b>Double Track</b>									
<b>Uses of Funds</b>									
Double Track Project Costs <sup>2</sup>	\$7.0	\$5.2	\$43.1	\$124.1	\$210.4	\$26.1			\$416.0
Finance Charges (RDA Member Dues)			\$0.0	\$1.1	\$1.6	\$1.5	\$1.5	\$0.0	\$5.8
Finance Charges (Appropriation Bonds)				\$2.5	\$4.1	\$4.1	\$4.0	\$0.0	\$14.7
Finance Charges (Grant Anticipation Notes)				\$4.5	\$6.3	\$5.1	\$2.8	\$0.8	\$19.6
<b>Total Uses of Funds</b>	<b>\$7.0</b>	<b>\$5.2</b>	<b>\$43.1</b>	<b>\$132.2</b>	<b>\$222.4</b>	<b>\$36.8</b>	<b>\$8.3</b>	<b>\$0.8</b>	<b>\$456.0</b>
<b>Sources of Funds</b>									
<b>Federal</b>									
FTA Section 5309 New Starts Funds			\$0.0	\$12.2	\$133.8	\$23.2	\$2.8	\$0.8	\$173.0
FTA Section 5309 New Starts Grant Anticipation Note Proceeds				\$12.5	\$50.0	\$50.0	\$50.0	\$10.5	\$173.0
FTA Section 5309 New Starts Grant Anticipation Note Principal Repayment <sup>3</sup>				\$1.3	\$114.4	\$21.4			\$137.1
				-\$1.5	-\$30.6	-\$48.2	-\$47.2	-\$9.6	-\$137.1
<b>Local</b>	<b>\$7.0</b>	<b>\$5.2</b>	<b>\$43.1</b>	<b>\$120.0</b>	<b>\$88.7</b>	<b>\$13.6</b>	<b>\$5.5</b>	<b>\$0.0</b>	<b>\$283.1</b>
Local Contribution (Cash)	\$3.2			\$36.5					\$39.7
RDA Member Dues (Cash)	\$3.7	\$0.0	\$0.0	\$0.8	\$2.0	\$2.0	\$1.5		\$10.1
RDA Member Dues (Bonds)				\$33.2					\$33.2
Next Level Connections Fund (Cash)	\$0.1	\$5.2	\$43.1	\$32.7	\$0.0	\$4.7			\$85.9
State Appropriation (Cash)	\$0.0	\$0.0	\$0.0	\$8.0	\$7.1	\$6.9	\$4.0	\$0.0	\$26.0
State Appropriation (Bonds)			\$0.0	\$8.7	\$79.5	\$0.0	\$0.0	\$0.0	\$88.2
<b>Total Sources of Funds</b>	<b>\$0.7</b>	<b>\$5.2</b>	<b>\$43.1</b>	<b>\$132.2</b>	<b>\$222.4</b>	<b>\$36.8</b>	<b>\$8.3</b>	<b>\$0.8</b>	<b>\$456.0</b>

1 Includes funds expended in prior years for project.

2 Includes \$0.9 million of project costs (Project Development costs) that are not available for Federal matching.

3 Represents year of debt service fund deposit and includes premium.

### **RDA Member Dues**

The RDA has committed to contributing a portion of the local share of capital funding from its member dues and participating unit revenues. Member dues are paid from statutorily-prescribed taxes from the Lake County cities of East Chicago, Hammond and Gary and from Lake and Porter Counties. Each member is obligated to pay dues annually to RDA.

### **Local Available Revenue**

LaPorte County Participants and St. Joseph County are contributing \$36.5 million as local matching funds. In addition, \$3.2 million has previously been contributed by local participants.

### **State Appropriations**

The Indiana General Assembly appropriated \$12 million in each of the State's fiscal years 2016 through 2019 for the Double Track and West Lake Projects. The State's annual appropriations of \$12 million per year is expected to continue over a 30-year period totaling \$360 million. Of the \$360 million, the State intends to utilize up to \$165.5 million to pay Double Track Project costs through cash or debt service.

### **Next Generation Trust Fund**

Bridge financing, in the form of GANs, is anticipated to be required for the Project given the differences in timing between capital cost expenditures and reimbursement from Section 5309 funds. Effective March 21, 2018, the Indiana General Assembly further evidenced its commitment to the Project by allowing the Next Generation Trust Fund to be used to secure debt service payments on the GANs in order to further reduce borrowing costs and increase financing proceeds for the projects.

### **Next Level Connections Fund**

The Indiana General Assembly recently established the Northern Indiana Commuter Rail Account (the “Account”) within the Next Level Connections Fund. The Account is a non-reverting fund, which means it is committed and immediately available. The Account may be used only to pay the costs of construction of the Rail Projects, which costs are broadly defined by statute. The Account consists of \$185 million and, upon the approval of the Governor, up to an additional \$20 million may be added to the Account. Upon the request of the IFA to the State Treasurer, the Treasurer purchases draw-down bonds from the Account to fund the construction costs as necessary. The draw-down bonds are secured by leases with the RDA. If a grant is awarded by the FTA, the Account funds need not be repaid. In the event a grant agreement is not awarded by the FTA, the RDA is responsible for repaying the bonds, plus interest at the U.S. Treasury rate. Of the available \$205 million it is expected DT will use \$85.9 million.

### **Financing Assumptions and Funding Totals**

IFA is expected to issue bonds payable from three sources of funds: (i) RDA Available Revenues; (ii) State Appropriations and (iii) Section 5309 CIG Funds with additional credit support provided by the Next Generation Trust Fund as previously described. While each funding source will be marketed as a distinct credit, the IFA and RDA anticipate structuring the transactions in such a way as to secure double-A category ratings for each credit. Financing assumptions for each of the debt transactions are detailed below. Interest rates are based upon historical means and credit spreads to allow for market changes.

**Table 2: Double Track Financing Assumptions<sup>1</sup>**

	RDA Member Dues Bonds	State Appropriation Bonds	Grant Anticipation Notes
Financing Date	7/1/2021	8/1/2021	6/1/2021
Final Maturity	6/1/2048	6/1/2050	6/1/2025
Anticipated Rating	AA-Category	AA-Category	AA-Category
Financing Proceeds	\$33.3 million	\$88.2 million	\$137.1 million
Costs of Issuance <sup>2</sup>	\$0.5 million	\$1.1 million	\$1.3 million
Effective Interest Rate	4.58%	4.56%	3.02%
Est. Annual Debt Service	\$2.2 million	\$5.5 million	\$48.9 million
Total Projected Debt Service	\$58.2 million	\$159.2 million	\$148.0 million

<sup>1</sup> Assumptions are preliminary and subject to change.

<sup>2</sup> Included in SCC 100 – Finance Costs.

The following table outlines the allocable expected debt service by calendar year and the total funding by source.

**Table 3: Double Track Financing Overview**

FTA CIG Projects	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	
<b>Double Track</b>																			
<b>Uses of Funds<sup>1</sup></b>																			
Double Track Project Costs	\$6.4	\$0.7	\$5.2	\$43.1	\$124.1	\$210.4	\$26.1	\$0.0											
Debt Service (RDA Member Dues Bonds)					\$0.7	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	
Debt Service (State Appropriation Bonds)					\$1.4	\$5.9	\$5.5	\$5.5	\$5.5	\$5.5	\$5.5	\$5.5	\$5.5	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	
Debt Service (Grant Anticipation Notes) <sup>2</sup>					\$4.0	\$33.5	\$50.0	\$50.0	\$10.5	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
<b>Total Uses of Funds</b>	<b>\$6.4</b>	<b>\$0.7</b>	<b>\$5.2</b>	<b>\$43.1</b>	<b>\$130.1</b>	<b>\$251.9</b>	<b>\$83.7</b>	<b>\$57.6</b>	<b>\$18.1</b>	<b>\$7.6</b>									
<b>Sources of Funds</b>																			
<b>Bond/GAN Proceeds for Project Costs</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$40.4</b>	<b>\$193.9</b>	<b>\$21.4</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	
FTA Section 5309 New Starts Grant Anticipation Note Proceeds					\$0.0	\$114.4	\$21.4												
RDA Member Dues (Bonds)					\$32.8														
State Appropriation (Bonds)					\$7.6	\$79.5													
<b>Federal</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$12.5</b>	<b>\$50.0</b>	<b>\$50.0</b>	<b>\$50.0</b>	<b>\$10.5</b>	<b>\$0.0</b>									
FTA Section 5309 New Starts Funds					\$12.5	\$50.0	\$50.0	\$50.0	\$10.5										
<b>Local</b>	<b>\$6.4</b>	<b>\$0.7</b>	<b>\$5.2</b>	<b>\$43.1</b>	<b>\$77.3</b>	<b>\$8.0</b>	<b>\$12.3</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	
RDA Member Dues (Cash)	\$3.2	\$0.5	\$0.0	\$0.0	\$0.7	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	
Local Contribution (Cash)	\$3.2				\$36.5														
State Appropriation (Cash)					\$7.4	\$5.9	\$5.5	\$5.5	\$5.5	\$5.5	\$5.5	\$5.5	\$5.5	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	
Next Level Connections Fund (Cash)		\$0.1	\$5.2	\$43.1	\$32.7	\$0.0	\$4.7												
<b>Total Sources of Funds</b>	<b>\$6.4</b>	<b>\$0.7</b>	<b>\$5.2</b>	<b>\$43.1</b>	<b>\$130.1</b>	<b>\$251.9</b>	<b>\$83.7</b>	<b>\$57.6</b>	<b>\$18.1</b>	<b>\$7.6</b>									
<b>Double Track</b>																			
<b>Uses of Funds<sup>1</sup></b>																			
Double Track Project Costs																			\$416.0
Debt Service (RDA Member Dues Bonds)	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$0.0	\$0.0	\$58.2	
Debt Service (State Appropriation Bonds)	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$159.2
Debt Service (Grant Anticipation Notes) <sup>2</sup>	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$148.0
<b>Total Uses of Funds</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$5.4</b>	<b>\$5.4</b>	<b>\$781.4</b>	
<b>Sources of Funds</b>																			
<b>Bond/GAN Proceeds for Project Costs</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$255.7</b>
FTA Section 5309 New Starts Grant Anticipation Note Proceeds																			\$135.8
RDA Member Dues (Bonds)																			\$32.8
State Appropriation (Bonds)																			\$87.1
<b>Federal</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$173.0</b>
FTA Section 5309 New Starts Funds																			\$173.0
<b>Local</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$5.4</b>	<b>\$5.4</b>	<b>\$352.7</b>	
RDA Member Dues (Cash)	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$2.1	\$0.0	\$0.0	\$62.0	
Local Contribution (Cash)																			\$39.7
State Appropriation (Cash)	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$5.4	\$165.2
Next Level Connections Fund (Cash)																			\$85.9
<b>Total Sources of Funds</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.6</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$7.5</b>	<b>\$5.4</b>	<b>\$5.4</b>	<b>\$781.4</b>	

1 Capital finance charges included as part of debt service.  
 2 Represents year of debt service fund deposit.

EXHIBIT C

RDA Committed Member Dues Revenues Pledged to the Payment of IFA RDA Member Dues

<b>Fiscal Year<sup>1</sup></b>	<b>RDA Member Dues Revenues<sup>2</sup></b>		<b>Fiscal Year<sup>3</sup></b>	<b>RDA Member Dues Revenues<sup>4</sup></b>
2017			2034	\$2,200,000
2018			2035	\$2,200,000
2019			2036	\$2,200,000
2020			2037	\$2,200,000
2021	\$700,000		2038	\$2,200,000
2022	\$2,200,000		2039	\$2,200,000
2023	\$2,200,000		2040	\$2,200,000
2024	\$2,200,000		2041	\$2,200,000
2025	\$2,200,000		2042	\$2,200,000
2026	\$2,200,000		2043	\$2,200,000
2027	\$2,200,000		2044	\$2,200,000
2028	\$2,200,000		2045	\$2,200,000
2029	\$2,200,000		2046	\$2,200,000
2030	\$2,200,000		2047	\$2,200,000
2031	\$2,200,000		2048	\$2,200,000
2032	\$2,200,000		2049	
2033	\$2,200,000		2050	
		<b>Total</b>		<b>\$60,100,000</b>

<sup>1</sup> For this purpose, fiscal year is the calendar year.

<sup>2</sup> Rounded up to the nearest \$100,000.

<sup>3</sup> For this purpose, fiscal year is the calendar year.

<sup>4</sup> Rounded up to the nearest \$100,000.

EXHIBIT D

Cash Participant Resolutions

FILED

JUN 06 2017

GALE A. NEULIEB  
CITY CLERK  
CITY OF MICHIGAN CITY

MICHIGAN CITY COMMON COUNCIL

RESOLUTION NO. 4679

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA, APPROVING THE ISSUANCE OF SPECIAL TAXING DISTRICT BONDS OF THE CITY OF MICHIGAN CITY, INDIANA, REDEVELOPMENT DISTRICT TO PAY A PORTION OF THE COSTS RELATED TO THE NICTD DUAL TRACKING PROJECT**

WHEREAS, the Common Council of the City of Michigan City, Indiana (the "Common Council"), is the legislative body of the City of Michigan City, Indiana (the "City"); and

WHEREAS, the Michigan City Redevelopment Commission (the "Commission"), the governing body of the City of Michigan City, Indiana, Redevelopment District (the "District"), exists and operates under the provisions of Indiana Code 36-7-14, as amended from time to time (the "Act"); and

WHEREAS, the Commission is authorized to expend necessary funding to assist in the development and promote economic benefits within the district pursuant to procedures that adhere to I.C. 36-7-14 et seq.; and

WHEREAS, the Commission has the authority and power to take the actions necessary for the issuance of Bonds for the funding of projects designed to promote the economic development within the District in accordance with I.C. 36-7-14, et seq.; and

WHEREAS, the City of Michigan City and the Common Council have historically and currently demonstrated the support of the commuter rail operations of the South Shore Line; and

WHEREAS, the Commission adopted Resolution No. 8-17 on May 31, 2017, a copy of which is attached hereto as Exhibit A, authorizing the issuance of Bonds in an aggregate principal amount of Five Million Three Hundred Thousand Ninety and 00/100 Dollars (\$5,390,000.00) as a portion of Michigan City's share of cash payment for LaPorte County's share of the cost of the Northwest Indiana Commuter Transportation District's Dual Tracking project (Project); and

WHEREAS, the Common Council desires to approve the issuance of the Bonds of the District for the purpose of paying a portion of the costs of the Project in accordance with the Act and applicable Indiana law because the Common Council finds that it is in the best interest of the District and the City to do so in order to provide for completion of the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA, AS FOLLOWS:**

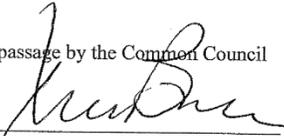
1. All of the above stated "WHEREAS" clauses are incorporated herein by reference.
2. The Council approves the City being a cash participant in the Northern Indiana Commuter Transportation District's Dual Tracking Project ("Project") in the total amount of Twelve Million One Hundred Sixty-six Thousand Six Hundred Sixty-six and 67/100 (\$12,166,666.67) Dollars pursuant to Indiana law and the City, through the Redevelopment District as approved by the Redevelopment Commission, and to make a cash payment to the Development Authority as defined for the Project by Indiana law, in contributing to LaPorte County's share of the local part of the state and local costs of the Project as directed by the Indiana Finance Authority.

CC: Redevelopment  
Commission - Babcock  
Planning (2x's)  
Corporate Counsel  
Controller (2x's)

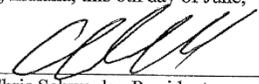
3. The issuance of the Bonds of the District in an aggregate principal amount of Five Million Three Hundred Thousand Ninety and 00/100 Dollars (\$5,390,000.00) for the purpose of paying a portion of the costs of the Project as approved by the Redevelopment Commission through its passage of its Resolution No. 8-17, a copy of which is attached hereto, is hereby approved.

This Resolution shall be in full force and effect from and after passage by the Common Council and approval by the Mayor.

INTRODUCED BY:

  
Tim Bietry, Member  
Michigan City Common Council

Passed by the Common Council of the City of Michigan City, Indiana, this 6th day of June, 2017.

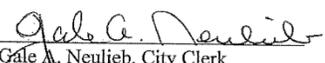
  
Chris Schwanke, President

Michigan City Common Council

Approved by me, this 13<sup>th</sup> day of June, 2017.

  
Ron Meer, Mayor  
City of Michigan City, Indiana

ATTEST:

  
Gale A. Neulieb, City Clerk  
Michigan City, Indiana

**RESOLUTION NO. 8-17**

**A RESOLUTION FOR THE  
MICHIGAN CITY REDEVELOPMENT COMMISSION  
TO BECOME A FINANCIAL PARTICIPANT  
IN THE NORTHERN INDIANA COMMUTER TRANSPORTATION  
DISTRICT'S MAIN LINE DOUBLE-TRACKING PROJECT**

**WHEREAS**, the Michigan City Redevelopment Commission (the "Commission") governing body of the City of Michigan City Department of Redevelopment (the "Department") and the Redevelopment District of the City of Michigan City, Indiana (the "Redevelopment District"), exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953 which has been codified in I.C. 36-7-14, et seq., as amended from time to time (the "Act"); and

**WHEREAS**, the Commission is authorized to expend necessary funding to assist in the development and promote economic benefits within the district pursuant to procedures that adhere to I.C. 36-7-14 et seq.; and

**WHEREAS**, the Commission has the authority and power to take the actions necessary for the issuance of Bonds for the funding of projects designed to promote the economic development within the District in accordance with I.C. 36-7-14, et seq.; and

**WHEREAS**, the Commission has historically and currently demonstrated the support of the commuter rail operations of the South Shore Line; and

**WHEREAS**, Commission, in cooperation with Lake, Porter, LaPorte and St. Joseph Counties has previously committed funding for the preliminary engineering and environmental analysis necessary to advance the double tracking project which will reduce travel time, increase train frequency, reliability and safety for the benefit of Michigan City residents and the region as a whole; and

**WHEREAS**, the Commission, along with Lake, Porter, LaPorte and St. Joseph Counties, urged the General Assembly to provide funding for constructing of this project, which resulted in a State of Indiana commitment to fund this project of \$6 million per year for 30 years; and

**WHEREAS**, the funding provided by the General Assembly for the project requires a four county local match which will enable the Northern Indiana Commuter Transportation District to seek a 50% federal matching grant to undertake the construction of the project improvements; and

**WHEREAS**, the Commission, recognizing the substantial redevelopment and economic benefits that this project will bring to the residents of Michigan City, LaPorte County, the Northwest region and the entire State of Indiana in terms of increased job opportunity, income, populations growth, and revenue for the county, is prepared to join with LaPorte County to jointly fund the county share of the project:

**NOW, THEREFORE, BE IT RESOLVED BY THE MICHIGAN CITY REDEVELOPMENT COMMISSION, GOVERNING BODY OF THE MICHIGAN CITY DEPARTMENT OF REDEVELOPMENT AS FOLLOWS:**

That the aforementioned findings as described herein are recognized, approved and adopted and incorporated herein.

Section 1. The Commission resolves to be a cash participant in the Northern Indiana Commuter Transportation District's Main Line Double-Tracking Project ("Project") pursuant to Indiana law, and will make a cash payment to the Development Authority as defined for the Project by Indiana law, in contributing to LaPorte County's share of the local part of the state and local costs of the Project as detailed below.

Section 2. The Commission commits and appropriates \$12,166,666.67 to the Project with \$6,776,666.67 of which shall come from cash on hand from the South Tax Increment Financing District and through the issuance of Bonds by the South Tax Increment Financing District in the amount of \$5,390,000.00.

Section 3. The \$12,166,666.67 shall be paid as directed by the Indiana Finance Authority within 120 days after the final Financing Plan is agreed to by the Development Authority and the Indiana Finance Authority, or by December 31, 2017, whichever is earlier.

Section 4. The remainder of LaPorte County's share of the rail project's cost, same being \$6,083,333.33, shall come from the LaPorte County governmental unit.

ALL OF WHICH IS RESOLVED this 31<sup>st</sup> day of May, 2017.

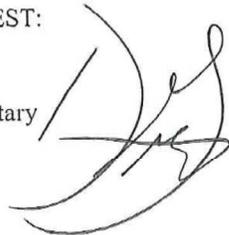
CITY OF MICHIGAN CITY, INDIANA  
DEPARTMENT OF REDEVELOPMENT



By: Donald Babcock, President

ATTEST:

By:  
Secretary





RESOLUTION NO. 2017-5

**A RESOLUTION OF THE LAPORTE COUNTY COUNCIL  
MAKING LAPORTE COUNTY A FINANCIAL PARTICIPANT  
IN THE NORTHERN INDIANA COMMUTER TRANSPORTATION  
DISTRICT'S MAIN LINE DOUBLE-TRACKING PROJECT**

WHEREAS, LaPorte County has for decades supported the commuter rail operations of the South Shore Line; and

WHEREAS, LaPorte County, in cooperation with Lake, Porter and St. Joseph Counties committed to fund the preliminary engineering and environmental analysis necessary to advance the double tracking project which will reduce travel time, increase train frequency, reliability and safety for the benefit of LaPorte County residents and the region as a whole; and

WHEREAS, LaPorte County, along with Lake, Porter and St. Joseph Counties, urged the General Assembly to provide funding for constructing of this project, which resulted in a State of Indiana commitment to fund this project of \$6 million per year for 30 years; and

WHEREAS, the funding provided by the General Assembly for the project requires a four county local match which will enable the Northern Indiana Commuter Transportation District to seek a 50% federal matching grant to undertake the construction of the project improvements; and

WHEREAS, LaPorte County, recognizing the substantial benefits that this project will bring to the residents of the County in terms of increased job opportunity, income, economic development, populations growth, and revenue for the county, is prepared to join with Michigan City to jointly fund the county share of the project:

NOW THEREFORE IT IS HEREBY RESOLVED as follows:

Section 1. LaPorte County resolves to be a cash participant in the Northern Indiana Commuter Transportation District's Main Line Double-Tracking Project ("Project") pursuant to Indiana law, and will make a cash payment to the Development Authority as defined for the Project by Indiana law, for LaPorte County's share of the local part of the state and local costs of the Project as detailed below.

Section 2. LaPorte County commits and appropriates \$6,083,333.33 to the Project; \$5,000,000 of which shall come from LaPorte County's Major Bridge Fund and \$1,083,333.33 shall come from the special LIT distribution currently received in the Emergency Reserve Fund.

Section 3. The \$6,083,333.33 shall be paid as directed by the Indiana Finance Authority within 120 days after the final Financing Plan is agreed to by the Development Authority and the Indiana Finance Authority, or by December 31, 2017, whichever is earlier.

Section 4. The remainder of LaPorte County's share of the rail project's cost, the same being \$12,166,666.67, shall come from Michigan City governmental units.

ALL OF WHICH IS RESOLVED this 30<sup>th</sup> day of May, 2017.

**LAPORTE COUNTY COUNCIL**

By:

[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]

ATTEST:

[Signature]  
 Joie Winski, LaPorte County Auditor



Bill No. 60-17

RESOLUTION NO. B7-17

**RESOLUTION OF THE ST. JOSEPH COUNTY COUNCIL APPROVING OF ST. JOSEPH COUNTY BECOMING A FINANCIAL PARTICIPANT IN THE NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT MAINLINE DOUBLE TRACKING PROJECT**

WHEREAS, the St. Joseph County Council (the "Council") supports the efforts of the Northern Indiana Transportation District ("NICTD") to improve train frequency, reliability and safety, recognizing that improved rail service between the NICTD station in South Bend and Chicago will generate greater economic development opportunities in St. Joseph County (the "County");

WHEREAS, the County, along with LaPorte County, Porter County and Lake County urged the General Assembly to identify funding to support construction of the mainline double tracking project (the "Project") which resulted in the General Assembly committing the State of Indiana (the "State") to fund a portion of the cost of the Project in the amount of \$6,000,000 per year for 30 years; and

WHEREAS, the LaPorte County Council, the Michigan City Redevelopment Commission, the Common Council of Michigan City and the Northwest Indiana Regional Development Authority (the "RDA") (representing the interests of Porter County and Lake County) have each previously adopted resolutions approving of providing financial support to assist the completion of the Project and NICTD is seeking federal funding for a portion of the costs of the Project; and

WHEREAS, this Council desires to evidence the support of the County for the Project and to approve of the County becoming a "cash participant county" as such term is used in House Enrolled Act 1144 of the State, committing to providing funding when appropriate for a portion of the expenses related to the Project;

**NOW, THEREFORE, BE IT RESOLVED BY THE ST. JOSEPH COUNTY COUNCIL AS FOLLOWS:**

**SECTION 1. Approval of Cash Participant County Designation.** This Council hereby approves of the designation of the County as a cash participant county as such term is defined in House Enrolled Act 1144 for purposes of the County participating in the Project. As a cash participant county, the County hereby determines to make a cash payment to the RDA or the Indiana Finance Authority (the "IFA") in an amount not to exceed \$18,250,000 (the "Cash Payment") within 120 days upon receipt of written notice that the RDA and the IFA have each approved a final financing plan for the Project to pay for a portion of the costs of the Project

**SECTION 2. Plan of Finance.** The County anticipates funding the Cash Payment

through the issuance of bonds of the County. That portion of the Project funded with the County's Cash Payment will not constitute a "controlled project" as such term is defined by I.C. 6-1.1-20-1.1 because the County reasonably expects to pay debt service on such bonds from funds other than property taxes that are exempt from the levy limitations of I.C. 6-1.1-18.5.

**SECTION 3. No Conflict.** All ordinances, resolutions, and orders or parts thereof in conflict with the provisions of this Resolution are to the extent of such conflict hereby repealed.

**SECTION 4. Effectiveness.** This Resolution shall be in full force and effect from and after its passage.

  
\_\_\_\_\_  
Member, St. Joseph County Council

**- FILED -**  
JUL 05 2017  
AUDITOR  
ST JOSEPH COUNTY

1st READING 7-11-17  
PUBLIC HEARING 7-11-17  
2nd READING  
NOT APPROVED  
REFERRED  
PASSED 9-0

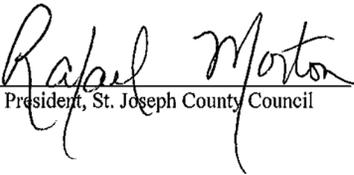
**FILED**  
JUL 05 2017  
COUNTY COUNCIL  
ST. JOSEPH COUNTY INDIANA

Bill No. 60-17

RESOLUTION NO. B7-17

RESOLUTION OF THE ST. JOSEPH COUNTY COUNCIL APPROVING OF ST. JOSEPH COUNTY BECOMING A FINANCIAL PARTICIPANT IN THE NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT MAINLINE DOUBLE TRACKING PROJECT

This bill came before the St. Joseph County Council this 11th day of July, 2017, and was voted to duly pass/not to pass, this Resolution.

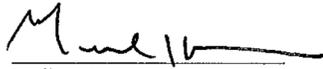
  
\_\_\_\_\_  
President, St. Joseph County Council

**VOTES**

Yes 9

No 0

**ATTEST:**

  
\_\_\_\_\_  
Auditor, St. Joseph County



**EXHIBIT 5B**

**West Lake Corridor Financing Plan**

The Financing Plan (this "Financing Plan") for the West Lake Corridor (the "WLC") is set forth herein. Subject to IC 5-1.3, the RDA is the exclusive fiscal officer and has final approval for financing the Rail Projects pursuant to IC 36-7.5-4-18. IC 5-1.3 and related amendments (the "Bond Act") have been enacted to provide specific statutory authority for IFA, RDA and NICTD to complete the Financing Plan and for dedication of the obligations of the State and the RDA with respect thereto, which may be used to finance the WLC, depending upon the sequencing of the review and approval of the Federal Transit Administration ("FTA"). RDA and the IFA have no obligation to fund or finance the Rail Projects other than as specifically set forth herein.

IFA, RDA, NICTD, and a trustee bank serving as trustee under the bonds issued by IFA as described below, will execute with a trustee bank (the "Deposit Trustee") a Revenue Trust Fund Agreement (the "Trust Fund Agreement") pursuant to which all such entities will agree to deposit proceeds, funds and revenues received by them for the Rail Projects into the respective funds, accounts, and subaccounts held by the Deposit Trustee under the Trust Fund Agreement ("Revenue Trust Fund"), including FTA grant proceeds received in reimbursement for Rail Project expenditures. The revenues received by the Deposit Trustee will be used to pay any bonds issued by IFA as described below, including any grant anticipation notes IFA may issue to provide interim funding for the Rail Projects and direct project costs.

The following funding sources for the WLC described in this Financing Plan are designed in part to provide the local governmental unit share pursuant to 49 U.S.C. 5309(d) and 49 C.F.R. 611.205 (the "Local Governmental Funding Share"). These funding sources will be elaborated in the subsequent paragraphs. A commonly drafted lease financing structure will be used for all of the bonds issued by IFA (the "IFA Bonds") as described below. The RDA, NICTD and the IFA have adopted resolutions to authorize or approve, as applicable: (1) the ground lease, pursuant to which NICTD (the owner of the existing facilities) will lease to the RDA the interests of NICTD in such facilities, including any assets or properties acquired by NICTD hereinafter for the WLC, except as provided in the Amended and Restated Governance Agreement among RDA, NICTD and IFA (the "Amended Governance Agreement"); (2) the underlying lease, pursuant to which the RDA will lease to the IFA such lease interests obtained from NICTD, to provide IFA the property interests sufficient to finance the WLC; (3) the master financing leases, pursuant to which the IFA will lease the WLC to the RDA during and after construction of the WLC and will provide for the repayment of the Bonds from payments described herein (the "Master Leases"); and (4) the operating lease from RDA to NICTD of the WLC so that NICTD can complete the construction of the WLC and thereafter to operate and maintain the WLC, subject to the provisions of the Amended Governance Agreement (collectively, the "Leases"). The IFA Bonds will be paid from the various rental payments made by the RDA to the IFA pursuant to the respective Master Leases.

- 1) State Funded Bonds/Contributions. IFA has taken action to approve the issuance of the following IFA Bonds:
  - a. The first type of IFA Bonds for WLC will consist of the draw down bonds pursuant to IC 5-13-10.5-20 (the “WLC Draw Down”). The Indiana General Assembly provided for an additional funding to be accessed to maintain progress on the Rail Projects. A portion of this money will be accessed for WLC. \$185,000,000 is available from the Next Level Connection Fund (the “NLCF”) under the Northern Indiana Commuter Rail Account (the “NLCF Rail Account”). An additional \$20,000,000 is available to be transferred into the NLCF Rail Account upon Governor’s approval. The IFA must submit a request to the treasurer of state in order to access the funds. The maximum principal amount of the bonds is \$205,000,000 for the Rail Projects.
  - b. The second type of IFA Bonds for WLC shall consist of lease rental subject-to-appropriation bonds (the “IFA Appropriations Bonds”) that will provide funding based upon market conditions and bond structuring at the time of issuance. In 2015, 2017, and 2019 legislation, the Indiana legislature specifically identified the annual appropriations the State planned to use to assist the RDA and NICTD in the financing of the Rail Projects using the lease financing structure set forth in the Bond Act. Specifically, as shown in Exhibit A, in 2015 the State commenced appropriating \$6 million per year for WLC and, in 2017 and 2019 the State continued appropriating in the combined amount of \$12 million per year for the Rail Projects to pay to the RDA the annual lease payments described below. The IFA has adopted a resolution to authorize the issuance of one or more series of bonds and notes to finance the WLC using the provisions of the Bond Act and the Leases. The rental payments owed by the RDA to the IFA under the respective Master Lease shall be subject to appropriations from the General Assembly to the RDA as lessee. Attached hereto as Exhibit B is a report of IFA's financial advisor (the "FA Report") estimating that approximately \$102,600,000 of funding for the WLC should be expected from the proceeds of the IFA appropriation bonds. The amount of funding for the WLC will be determined on the date of sale of these IFA Bonds based upon market conditions and final structuring payable only from an estimated \$6.5 million of the \$12 million in appropriations described above in each of 29 years. IFA, RDA, and the State's sole obligation with respect to the amount of funding provided from the IFA Appropriation Bonds is to dedicate those annual appropriations pledged to the IFA Appropriation Bonds for the WLC through the State’s fiscal year 2050. The proceeds of the IFA Appropriation Bonds will be deposited into the IFA Appropriation Project Account of the Project Fund established pursuant to the Trust Fund Agreement with respect to the WLC.
  - c. The third type of IFA Bonds for WLC shall consist of notes (the “IFA GANS”) that will be issued by IFA pursuant to the Bond Act and the Leases as needed to fund expenditures on the WLC pending receipt of FTA grants using the Leases. The Indiana General Assembly created the Next Generation

Trust Fund pursuant to IC 8-14-15.2 (the "Fund"). In particular, pursuant to IC 8-14-15.2-10, the Fund may be used to make and secure lease rental payments due under the respective Master Lease that are payable from grant proceeds from the federal government, which lease rental payments will be used to pay the IFA GANS. The principal of the Fund is two hundred fifty million dollars (\$250,000,000). The FA Report estimates that approximately \$305,200,000 of funding for the WLC should be expected from the IFA GANS. IFA, RDA and the State's sole obligations with respect to the payment of the IFA GANS for WLC are the grant proceeds received from the FTA and the moneys held in the Fund to the extent grant proceeds are insufficient to pay debt service. The proceeds of the IFA GANS will be deposited into the FTA Grant Reimbursement Project Account of the Project Fund established pursuant to the Trust Fund Agreement with respect to the WLC.

- d. Of the State appropriations referenced in subsection (b) above, the IFA and the State intends to utilize \$6,000,000 of State funds for WLC as cash funding. In addition, \$53,700,000 of the NLCF funds referenced in subsection (a) above are expected to be utilized as cash funding after the receipt of the FTA's Full Funding Grant Agreement (the "FFGA")
- e. Notwithstanding anything stated in this Section (1), except as provided in subsection (a), IFA is not obligated to issue the IFA Appropriation Bonds or the IFA GANS or provide funding for WLC until the FFGA for WLC is executed, except as provided in Section 5.3 of the Amended Governance Agreement.

2) RDA Funds.

- a. There is an additional type of IFA Bonds (the "IFA Available Revenue Bonds") for WLC payable by RDA Master Lease rental payments from Available Revenues. Available Revenues are derived from two sources:
  - i. The first source is statutorily-prescribed taxes from the Lake County cities of East Chicago, Hammond and Gary and from Lake and Porter Counties (the "Members") payable to RDA from the Members will be available as a source of payment of lease rentals paid by RDA to IFA to pay the debt service on the IFA Available Revenue Bonds. Each Member is obligated to pay dues (the "Member Dues") annually to RDA. The Indiana General Assembly has provided that the State Treasurer withhold Member Dues before the remaining taxes due to the Members are distributed to the Members and transfer those withheld Member Dues to the RDA. The second revenue stream for IFA Available Revenue Bonds is payments which will be received directly from the Auditor of State and sent directly to the RDA and can be used by RDA for payment of the IFA Available Revenue Bonds in lieu of the Member Dues. These payments were originally promised

pursuant to an Interlocal Agreement, a resolution, ordinance, or other action offering to provide revenue to support and finance from their already existing local income taxes the WLC (the “Participant Unit Revenue”). The Indiana General Assembly codified portions of the Interlocal Agreement in 2019 within House Enrolled Act 1473-2019. Pursuant to IC 36-7.5-4-21, the Participant Unit Revenue will not be deposited into the Revenue Trust Fund and/or utilized as Available Revenues until the RDA adopts a resolution taking notice of an executed FFGA. The RDA will determine what amount and from what source the Available Revenues will be applied for the payment of debt service on the IFA Available Revenues Bonds.

- ii. The RDA board has authorized the commitment of approximately \$14,100,000 annually of Available Revenues to the RDA Master Lease rentals for the IFA Available Revenues Bonds under RDA Resolution 19-01 adopted on June 20, 2019. As set forth in Table 3: West Lake Corridor Financing Overview included in Exhibit B hereof (“Table 3”), the annual amount (beginning in 2020) is needed in order to provide proceeds of \$217,800,000 for West Lake Corridor capital costs. The Available Revenues set forth in Exhibit C shall constitute the sole source of payment of IFA Available Revenues Bonds by the RDA.
- b. The FA Report estimates that \$217,800,000 of funding for WLC capital costs projected in Table 3 should be expected from IFA Available Revenues Bonds. The amount of funding for the WLC from the IFA Available Revenues Bonds will be determined on the date of sale of these Bonds based upon market conditions and final structuring. IFA, RDA and the State’s sole obligations with respect to the amount of funding for WLC provided from the IFA Available Revenues Bonds is to make available the Available Revenues as set forth in clause (a)(ii) above. The proceeds of the IFA Available Revenues Bonds will be deposited into the IFA Available Revenue Project Account of the Project Fund established pursuant to the Trust Fund Agreement with respect to the WLC.
- c. RDA also agreed to commit \$47,841,283 of cash funding to the WLC pursuant to RDA Resolution 19-01. Part of this cash funding may be utilized from the Participating Unit Revenue after the RDA adopts a resolution taking notice of an executed FFGA.
- d. Notwithstanding anything stated in this section (2), and except as provided in Section (1)(a) and 2(c), RDA is not obligated to enter into any Master Leases or provide funding for WLC until the FFGA for WLC is executed, except as provided in Section 5.3 of the Amended Governance Agreement.
- e. The RDA also committed additional financial support to WLC pursuant to IC 6-3.1-20-7(d) as described in Section 8.4 of the Amended Governance

Agreement “to establish or improve public mass rail transportation systems in Lake County.” Except as otherwise provided in Section 8.4 of the Governance Agreement, IFA and RDA have no obligations to fund operations of the Rail Projects or the South Shore Line.

3) Maximum Principal Amounts of IFA Bonds.

- a. The IFA has authorized the issuance of IFA Bonds in an aggregate principal amount not to exceed \$825,000,000 for WLC.

4) Federal Funding.

- a. In addition to the federal grant proceeds to be used to repay the IFA GANS, the FA Report estimates that approximately \$19,000,000 of federal grant proceeds will be used to construct the WLC prior to the issuance of the IFA GANS.

EXHIBIT A

State of Indiana Biennial Budget Appropriations to  
Northwest Indiana Regional Development Authority for the Rail Projects

House Enrolled Act 1001 – 2015

2015 Budget Bill: Page 104 <https://iga.in.gov/static-documents/5/3/8/6/53861fe8/HB1001.05.ENRH.pdf>

	<i>FY 2015-2016 Appropriation</i>	<i>FY 2016-2017 Appropriation</i>	<i>Biennial Appropriation</i>
<b>FOR THE STATE BUDGET AGENCY</b>			
Aviation Technology Center			2,285,632
Airport Facilities Leases			40,136,288
Stadium Lease Rental			166,544,023
Convention Center Lease Rental			48,468,078
State Fair Lease Rental			8,524,426
Indiana Motorsports Commission			4,000,000
Northwest Indiana Regional Development Authority			12,000,000

House Enrolled Act 1001 – 2017

2017 Budget Bill: Page 94 <https://iga.in.gov/static-documents/d/4/d/7/d4d75ee8/HB1001.06.ENRS.pdf>

	<i>FY 2017-2018 Appropriation</i>	<i>FY 2018-2019 Appropriation</i>	<i>Biennial Appropriation</i>
<b>FOR THE STATE BUDGET AGENCY</b>			
Airport Facilities Leases			29,548,602
Stadium Lease Rental			131,032,945
Convention Center Lease Rental			48,918,732
State Fair Lease Rental			8,536,075
Indiana Motorsports Commission			14,000,000
Northwest Indiana Reg. Dev. Authority	6,000,000	12,000,000	
White River State Park Commission			12,000,000

House Enrolled Act 1001 - 2019

2019 Budget Bill: Page 89: <http://iga.in.gov/static-documents/a/4/7/2/a47201d3/HB1001.06.ENRS.pdf>

	<i>FY 2019-2020 Appropriation</i>	<i>FY 2020-2021 Appropriation</i>	<i>Biennial Appropriation</i>
<b>FOR THE STATE BUDGET AGENCY</b>			
Stadium Lease Rental	66,397,560	68,540,540	
Convention Center Lease Rental	21,962,110	22,510,343	
State Fair Coliseum Lease Rental	4,049,338	4,047,738	
Indiana Motorsports Commission	7,000,000	7,000,000	
Northwest Indiana Reg. Dev. Authority	12,000,000	12,000,000	
Water Infrastructure Assistance	0	20,000,000	
First Responder Regional Training Pilot	0	250,000	

## EXHIBIT B

### Report of the Financial Advisor

PFM Financial Advisors LLC, with input and assistance from the IFA, RDA, NICTD and each entity's consultants have drafted a preliminary capital financing plan for the construction of the WLC. The following discussion and tables outline the information provided upon which the preliminary capital financing plan is based, the assumptions utilized and the resulting cashflow. The capital cost estimate of \$933.1 million includes \$816.3 million of acquisition, construction, improvement and professional service costs and \$116.8 million of Project finance charges that are eligible for 38% reimbursement through the New Starts program. The Project finance charges were calculated based upon estimated bond interest through the term of the Federal Grant plus the costs of issuance related to the issuance of the bonds. It is currently anticipated that the IFA will issue four distinct types of debt for the Project based upon security and source of repayment – RDA Available Revenue-backed bonds, WLC Draw Down bonds, State Appropriation-Backed bonds, and Grant Anticipation Notes (“GANs”) which will receive credit support from the State's Next Generation Trust Fund. We recognize that the Next Level Connections Fund monies will be initially provided through the purchase of WLC Draw Down bonds. Given the forgivable nature of such draw-down bonds upon receipt of an FFGA, we have not included any assumptions with regards to financing charges or debt service on such WLC Draw Down bonds.

Based upon a construction schedule developed by NICTD utilizing a 31.5% budget contingency, a financing plan was developed which utilized the committed local funding sources and Section 5309 Capital Investment Grant dollars on a PAY-GO basis until the pace of construction needs requires bonding. The following table summarizes the sources of funds and when they are deployed for funding construction.

**Table 1: West Lake Project Flow (YOE\$, in millions)**

FTA CIG Projects	2018 <sup>1</sup>	2019	2020	2021	2022	2023	2024	2025	Total
<b>West Lake</b>									
<b>Uses of Funds</b>									
West Lake Corridor Project Costs	\$21.8	\$31.9	\$195.4	\$316.8	\$197.5	\$49.1	\$3.7		\$816.3
Finance Charges (RDA Available Revenue Bonds)			\$6.7	\$10.5	\$10.3	\$10.1	\$9.9	\$4.9	\$52.3
Finance Charges (State Appropriation Bonds)				\$3.7	\$4.9	\$4.8	\$4.7	\$2.3	\$20.5
Finance Charges (Grant Anticipation Notes)				\$16.9	\$11.7	\$8.5	\$5.2	\$1.7	\$44.0
<b>Total Uses of Funds</b>	<b>\$21.8</b>	<b>\$31.9</b>	<b>\$202.1</b>	<b>\$347.9</b>	<b>\$224.3</b>	<b>\$72.5</b>	<b>\$23.5</b>	<b>\$9.0</b>	<b>\$933.1</b>
<b>Sources of Funds</b>									
<b>Federal</b>									
Federal	\$0.0	\$0.0	\$18.8	\$123.2	\$204.4	\$5.3	\$2.1	\$0.7	\$354.6
FTA Section 5309 New Starts Funds			\$18.8	\$75.0	\$75.0	\$75.0	\$75.0	\$35.8	\$354.6
FTA Section 5309 New Starts Grant Anticipation Note Proceeds				\$111.5	\$196.6				\$308.2
FTA Section 5309 New Starts Grant Anticipation Note Principal Repayment <sup>2</sup>				-\$63.3	-\$67.2	-\$69.7	-\$72.9	-\$35.1	-\$308.2
<b>Local</b>									
Local Contribution (Cash) <sup>3</sup>	\$21.8	\$31.9	\$183.4	\$224.7	\$19.9	\$67.2	\$21.4	\$8.2	\$578.5
Local Contribution (Cash)		\$10.4							\$10.4
RDA Available Revenues (Cash)	\$21.8	\$15.6	\$3.5	\$12.7	\$13.0	\$12.3	\$12.1	\$4.9	\$95.9
RDA Available Revenues (Bonds)			\$115.3	\$105.6					\$221.0
Next Level Connections Fund (Cash)		\$5.9	\$58.5	\$0.0	\$0.9	\$49.1	\$3.7	\$0.0	\$118.1
State Appropriation (Cash)			\$6.0	\$2.5	\$6.1	\$5.8	\$5.7	\$3.3	\$29.3
State Appropriation (Bonds)				\$103.9					\$103.9
<b>Total Sources of Funds</b>	<b>\$21.8</b>	<b>\$31.9</b>	<b>\$202.1</b>	<b>\$347.9</b>	<b>\$224.3</b>	<b>\$72.5</b>	<b>\$23.5</b>	<b>\$9.0</b>	<b>\$933.1</b>

1 Includes funds expended in prior years for project.

2 Represents year of debt service fund deposit and includes premium.

3 \$10.4 million of LIT revenues currently collected

### **RDA Member Dues and Participant Unit Revenues**

The RDA has committed to contributing a portion of the local share of capital funding from its member dues and participating unit revenues. Member dues are paid from statutorily-prescribed taxes from the Lake County cities of East Chicago, Hammond and Gary and from Lake and Porter Counties. Each member is obligated to pay dues annually to RDA.

The RDA has also committed to contributing a portion of the local share of capital funding from local income tax revenues paid to the RDA from various local units of government in Lake County, Indiana (“Participant Unit Revenue”). Pursuant to IC 36-7.5-4-22, IC 6-3.9-9-5 and IC 6-3.6-11-5.5, the Department of Local Government Finance shall notify the Lake County Auditor and Auditor of State of the certified amounts to be withheld by the Auditor of State and sent directly to the RDA for utilization on the WLC annually. The financing plan includes \$14.1 million per year in estimated debt service payments from its member dues and participant unit revenues for the Project to support debt service payments on the bonds issued by the IFA which are payable from RDA member dues and Participant Unit Revenues (collectively referred to as “RDA Available Revenues”). This issuance is expected to provide a total of \$217.8 million in bond proceeds for West Lake Corridor capital costs. In addition to making annual payments for debt service, the financing plan shows RDA contributing \$37.4 million from member dues and \$10.4 million from Participant Unit Revenues for construction funding prior to bonds being issued, for a total of \$47.8 million. To date, RDA has already contributed \$22 million of the \$47.8 million from its RDA Available Revenues to capital costs on the Project.

### **State Appropriations**

The Indiana General Assembly appropriated \$12 million in each of the State's fiscal years 2016 through 2021 for the Double Track and West Lake Corridor Projects. The State's annual appropriations of \$12 million per year is expected to continue over a 30-year period totaling \$360 million. Of the \$360 million, the State intends to utilize \$194.4 million to pay West Lake Corridor Project costs through cash or debt service.

### **Next Generation Trust Fund**

Bridge financing, in the form of GANs, is anticipated to be required for the Project given the differences in timing between capital cost expenditures and reimbursement from Section 5309 funds. Effective March 21, 2018, the Indiana General Assembly further evidenced its commitment to the Project by allowing the Next Generation Trust Fund to be used to secure debt service payments on the GANs in order to further reduce borrowing costs and increase financing proceeds for the projects.

### **Next Level Connections Fund**

The Indiana General Assembly recently established the Northern Indiana Commuter Rail Account (the "Account") within the Next Level Connections Fund. The Account is a non-reverting fund, which means it is committed and immediately available. The Account may be used only to pay the costs of construction of the Rail Projects, which costs are broadly defined by statute. The Account consists of \$185 million and, upon the approval of the Governor, up to an additional \$20 million may be added to the Account. Upon the request of the IFA to the State Treasurer, the Treasurer purchases draw-down bonds from the Account to fund the construction costs as necessary. The draw-down bonds are secured by leases with the RDA. If a grant is awarded by the FTA, the Account funds need not be repaid. In the event a grant agreement is not awarded by the FTA, the RDA is responsible for repaying the bonds, plus interest at the U.S. Treasury rate. Of the available \$205 million it is expected WLC will use \$118.1 million.

### **Financing Assumptions and Funding Totals**

IFA is expected to issue bonds payable from three sources of funds: (i) RDA Available Revenues; (ii) State Appropriations and (iii) Section 5309 CIG Funds with additional credit support provided by the Next Generation Trust Fund as previously described. While each funding source will be marketed as a distinct credit, the IFA and RDA anticipate structuring the transactions in such a way as to secure double-A category ratings for each credit. Financing assumptions for each of the debt transactions are detailed below. Interest rates are based upon historical means and credit spreads to allow for market changes.

**Table 2: West Lake Corridor Financing Assumptions<sup>1</sup>**

	<b>RDA Available Revenue Bonds</b>	<b>State Appropriation Bonds</b>	<b>Grant Anticipation Notes</b>
Financing Date	8/1/2020	6/1/2021	12/1/2020
Final Maturity	6/1/2048	6/1/2050	6/1/2025
Anticipated Rating	AA-Category	AA-Category	AA-Category
Financing Proceeds	\$221.0	\$103.9	\$308.2
Costs of Issuance <sup>2</sup>	\$3.2	\$1.3	\$2.9
Effective Interest Rate	4.62%	4.56%	3.32%
Est. Annual Debt Service	\$14.1	\$6.5	\$73.5
Total Projected Debt Service	\$394.9	\$188.4	\$335.1

<sup>1</sup> Assumptions are preliminary and subject to change.

<sup>2</sup> Included in SCC 100 – Finance Costs.

The following table outlines the allocable expected debt service by calendar year and the total funding by source.

**Table 3: West Lake Corridor Financing Overview**

FTA CIG Projects	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	
<b>West Lake</b>																			
<b>Uses of Funds<sup>1</sup></b>																			
West Lake Project Costs	\$3.6	\$14.2	\$4.0	\$31.9	\$195.4	\$316.8	\$197.5	\$49.1	\$3.7										
Debt Service (RDA Available Revenue Bonds)					\$3.5	\$14.1	\$14.1	\$14.1	\$14.1	\$14.1	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	
Debt Service (State Appropriation Bonds)					\$0.0	\$2.5	\$6.5	\$6.5	\$6.5	\$6.4	\$6.5	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	
Debt Service (Grant Anticipation Notes) <sup>2</sup>					\$43.5	\$73.5	\$73.5	\$73.5	\$71.8	\$0.0									
<b>Total Uses of Funds</b>	<b>\$3.6</b>	<b>\$14.2</b>	<b>\$4.0</b>	<b>\$31.9</b>	<b>\$242.4</b>	<b>\$406.9</b>	<b>\$291.5</b>	<b>\$143.2</b>	<b>\$96.0</b>	<b>\$20.5</b>	<b>\$20.4</b>	<b>\$20.4</b>							
<b>Sources of Funds</b>																			
<b>Bond/GAN Proceeds for Project Costs</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$112.2</b>	<b>\$316.8</b>	<b>\$196.6</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	
FTA Section 5309 New Starts Grant Anticipation Note Proceeds						\$108.6	\$196.6												
RDA Available Revenues (Bonds)					\$112.2	\$105.6	\$0.0	\$0.0	\$0.0										
State Appropriation (Bonds)						\$102.6													
<b>Federal</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$62.3</b>	<b>\$73.5</b>	<b>\$73.5</b>	<b>\$73.5</b>	<b>\$71.8</b>	<b>\$0.0</b>									
FTA Section 5309 New Starts Funds					\$62.3	\$73.5	\$73.5	\$73.5	\$71.8	\$0.0									
<b>Local</b>	<b>\$3.6</b>	<b>\$14.2</b>	<b>\$4.0</b>	<b>\$31.9</b>	<b>\$68.0</b>	<b>\$16.5</b>	<b>\$21.4</b>	<b>\$69.7</b>	<b>\$24.2</b>	<b>\$20.5</b>	<b>\$20.4</b>	<b>\$20.4</b>							
RDA Available Revenues (Cash)	\$3.6	\$14.2	\$4.0	\$15.6	\$3.5	\$14.1	\$14.1	\$14.1	\$14.1	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	
Local Contribution (Cash)				\$10.4															
State Appropriation (Cash)					\$6.0	\$2.5	\$6.5	\$6.5	\$6.5	\$6.4	\$6.5	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	
Next Level Connections Fund (Cash)				\$5.9	\$58.5	\$0.0	\$0.9	\$49.1	\$3.7	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	
<b>Total Sources of Funds</b>	<b>\$3.6</b>	<b>\$14.2</b>	<b>\$4.0</b>	<b>\$31.9</b>	<b>\$242.4</b>	<b>\$406.9</b>	<b>\$291.5</b>	<b>\$143.2</b>	<b>\$96.0</b>	<b>\$20.5</b>	<b>\$20.4</b>	<b>\$20.4</b>							
<b>West Lake</b>																			
<b>Uses of Funds<sup>1</sup></b>																			
West Lake Project Costs																			\$816.3
Debt Service (RDA Available Revenue Bonds)	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$13.9	\$13.9	\$13.9	\$13.9	\$13.9	\$13.9	\$13.9	\$13.8	\$13.8	\$0.0	\$0.0	\$0.0	\$394.9
Debt Service (State Appropriation Bonds)	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.3	\$188.4
Debt Service (Grant Anticipation Notes) <sup>2</sup>																			\$335.8
<b>Total Uses of Funds</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.2</b>	<b>\$20.2</b>	<b>\$20.2</b>	<b>\$6.4</b>	<b>\$6.3</b>	<b>\$0.0</b>	<b>\$1735.5</b>
<b>Sources of Funds</b>																			
<b>Bond/GAN Proceeds for Project Costs</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$625.6</b>
FTA Section 5309 New Starts Grant Anticipation Note Proceeds																			\$305.2
RDA Available Revenues (Bonds)																			\$217.8
State Appropriation (Bonds)																			\$102.6
<b>Federal</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$0.0</b>	<b>\$354.6</b>
FTA Section 5309 New Starts Funds																			\$354.6
<b>Local</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.2</b>	<b>\$20.2</b>	<b>\$20.2</b>	<b>\$6.4</b>	<b>\$6.3</b>	<b>\$0.0</b>	<b>\$755.3</b>
RDA Available Revenues (Cash)	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$14.0	\$13.9	\$13.9	\$13.9	\$13.9	\$13.9	\$13.9	\$13.8	\$13.8	\$0.0	\$0.0	\$0.0	\$0.0	\$432.4
Local Contribution (Cash)																			\$10.4
State Appropriation (Cash)	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.4	\$6.3	\$194.4
Next Level Connections Fund (Cash)	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$118.1
<b>Total Sources of Funds</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.4</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.3</b>	<b>\$20.2</b>	<b>\$20.2</b>	<b>\$20.2</b>	<b>\$20.2</b>	<b>\$6.4</b>	<b>\$6.3</b>	<b>\$0.0</b>	<b>\$1735.5</b>

1 Capital finance charges included as part of debt service.  
 2 Represents year of debt service fund deposit.

EXHIBIT C

RDA Committed Member Dues and Committed Available Revenues Pledged to the Payment of IFA Available Revenues Bonds

<b>Fiscal Year<sup>1</sup></b>	<b>RDA Member Dues and Available Revenues<sup>2</sup></b>		<b>Fiscal Year<sup>3</sup></b>	<b>RDA Member Dues and Available Revenues<sup>4</sup></b>
2017	0		2034	\$14,000,000
2018	0		2035	\$14,000,000
2019	0		2036	\$14,000,000
2020	\$3,600,000		2037	\$14,000,000
2021	\$14,100,000		2038	\$14,000,000
2022	\$14,100,000		2039	\$14,000,000
2023	\$14,100,000		2040	\$14,000,000
2024	\$14,100,000		2041	\$14,000,000
2025	\$14,100,000		2042	\$14,000,000
2026	\$14,100,000		2043	\$14,000,000
2027	\$14,100,000		2044	\$13,900,000
2028	\$14,100,000		2045	\$13,900,000
2029	\$14,100,000		2046	\$13,900,000
2030	\$14,100,000		2047	\$13,900,000
2031	\$14,100,000		2048	\$13,900,000
2032	\$14,100,000		2049	0

<sup>1</sup> For this purpose, fiscal year is the calendar year.

<sup>2</sup> Rounded up to the nearest \$100,000.

<sup>3</sup> For this purpose, fiscal year is the calendar year.

<sup>4</sup> Rounded up to the nearest \$100,000.

2033	\$14,100,000		2050	0
		Total		\$396,400,000

**EXHIBIT 6**

WEST LAKE OPERATING DEFICIT CALCULATION

<b>Direct* Operating Revenue and Expenses</b>	<b>SSL</b>	<b>WLC</b>	<b>Total</b>
Passenger Revenue <sup>1</sup>			
<u>Non-Passenger Revenue<sup>2</sup></u>			
Total Direct Operating Revenue (A)			
Operating Expenses <sup>3</sup>			
Transportation			
Maintenance of Way			
Maintenance of Equipment			
Claims and Insurance			
<u>General and Administrative</u>			
Total Direct Operating Expenses (B)			
Direct Operating Surplus/(Deficit) (= A – B)			

\* To the extent practicable, NICTD will track operating revenue and Operating Expenses using segment level accounting codes (Direct revenue and expenses), consistent with FTA’s Uniform System of Accounts. West Lake Passenger Revenue shall include all Fare Revenue (as defined by the Federal Transit Administration’s (FTA’s) National Transit Database (NTD) Glossary) collected for any trip with a West Lake origin or destination.

<b>Allocated^ System Operating Revenue and Expenses</b>	
Allocated Passenger Revenue	
<u>Allocated Non-Passenger Revenue</u>	
Total Allocated Operating Revenue	
Allocated Operating Expenses	
Transportation	
Maintenance of Way	
Maintenance of Equipment	
Claims and Insurance	
<u>General and Administrative</u>	
Total Allocated Operating Expenses	
Allocated Operating Surplus/(Deficit) (W)	
SSL Actual Vehicle Revenue Miles <sup>4</sup>	
WLC Actual Vehicle Revenue Miles (X)	
System-Wide Actual Vehicle Revenue Miles (Y)	
WLC Allocation % (Z = X / Y)	
WLC Allocation of Surplus/(Deficit) (= Z * W)	

^ Operating revenue and Operating Expenses that cannot be directly tracked using segment level accounting codes will be allocated based on the ratio of West Lake Actual Vehicle Revenue Miles to system-wide Actual Vehicle Revenue Miles for the period unless the parties agree to an alternative allocation method.

Operating Deficit/Subsidy	
WLC Direct Surplus/(Deficit)	
<i>plus</i>	
WLC Allocated Surplus/(Deficit)	
<i>equals (if sum of above results in deficit):</i>	
Current quarterly West Lake Operating Deficit:	

Documentation including, but not limited to, general ledger and service reports will be provided to RDA at its request to provide adequate support for the reporting of revenues, costs, allocation, and calculation methods.

The undersigned, \_\_\_\_\_, the \_\_\_\_\_ of the Northern Indiana Commuter Transportation District (“NICTD”), with respect to the Governance Agreement by and among the Northwest Indiana Regional Development Authority, NICTD and the Indiana Finance Authority, effective as of \_\_\_\_\_, 2018 (the “Governance Agreement”), hereby certifies that the West Lake Operating Deficit for the quarter ended \_\_ \_\_, 20\_\_ is \_\_\_\_, as evidenced by the above calculation. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Governance Agreement.

Dated: \_\_\_\_\_, 20\_\_.

NORTHERN INDIANA COMMUTER  
TRANSPORTATION DISTRICT

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

*Defined Terms:*

1. Passenger Revenue - All revenue as reported under Passenger Fares in NICTD's audited financial statements and amounts defined as Fare Revenues, Contract Revenues, Fare Assistance, and Passenger Fare Assistance under the Federal Transit Administration's (FTA's) National Transit Database (NTD) Glossary.
2. Non-Passenger Revenue – Ancillary revenue generated from or provided for the operations of the rail system including, but not limited to, parking lot collections or any other subsidy or grant used to fund or offset Operating Expenses of the rail system. Non-Passenger Revenue includes Park-and-Ride Parking Revenue, Auxiliary Transportation Funds, Other Auxiliary Transportation Revenues, Station Concessions, Vehicle Concessions, Local Operating Funds, State Operating Assistance, Public Mass Transportation Funds (per IC 8-23-3-8), Subsidies from other Sectors of Operations, and Operating Assistance as defined under the Federal Transit Administration's (FTA's) National Transit Database (NTD) Glossary. For the purposes of this West Lake Operating Deficit Calculation, Non-Passenger Revenue includes capital grant receipts to fund or offset eligible Operating Expenses including, but not limited to, preventative maintenance.
3. Operating Expenses - as defined under the Federal Transit Administration's (FTA's) National Transit Database (NTD) Glossary. For the purposes of this West Lake Operating Deficit Calculation, Operating Expenses excludes depreciation, amortization, and financing costs.
4. Actual Vehicle Revenue Miles (VRM) – as defined under the Federal Transit Administration's (FTA's) National Transit Database (NTD) Glossary.



FORM OF REVENUE COVERAGE CALCULATION<sup>7</sup>

Gross Revenues for Fiscal Year Ending 20 , Together with  
Unrestricted Cash on Hand at the Beginning of Such Fiscal Year

Operating Revenues

Passenger Fares (net of refunds) \$ \_\_\_\_\_  
 Parking Lot Collections \$ \_\_\_\_\_

Non-operating Revenues

Federal maintenance grant \$ \_\_\_\_\_  
 State operating assistance (excluding Restricted Taxes) \$ \_\_\_\_\_  
 Other local funds \$ \_\_\_\_\_  
 Other revenue \$ \_\_\_\_\_

Current Unrestricted Cash

Unrestricted Cash<sup>8</sup> as of the previous Fiscal Year \$ \_\_\_\_\_

Total \$ \_\_\_\_\_  
 (Gross Revenues)

Operations Expenses for Fiscal Year Ending 20

Operating Expenses<sup>9</sup>

Transportation \$ \_\_\_\_\_  
 Maintenance of way \$ \_\_\_\_\_  
 Maintenance of Equipment \$ \_\_\_\_\_  
 Claims and insurance \$ \_\_\_\_\_  
 General and Administrative \$ \_\_\_\_\_

Total \$ \_\_\_\_\_  
 (Operations Expenses)

Revenue Coverage Calculation

$$\frac{\$ \text{_____} \text{ (Gross Revenues)}}{\$ \text{_____} \text{ (Operations Expenses)}} = \text{_____} \text{ (Revenue Coverage)}$$

The undersigned, \_\_\_\_\_, the \_\_\_\_\_ of the Northern Indiana Commuter Transportation District (“NICTD”), with respect to the Governance Agreement by and among

<sup>7</sup> Pursuant to the Governance Agreement Revenue Coverage is defined as the ratio of Gross Revenues in such fiscal year, together with unrestricted cash collected in previous years and remaining on deposit with NICTD at the beginning of such fiscal year, to the sum of Operations Expenses for such fiscal year.

<sup>8</sup> Includes current unrestricted cash as reported in NICTD's audited financial statements for the previous fiscal year.

<sup>9</sup> Pursuant to the Governance Agreement, Operations Expenses is defined as NICTD operating and maintenance expenses, excluding noncash expenses such as depreciation and amortization.

the Northwest Indiana Regional Development Authority, NICTD and the Indiana Finance Authority, effective as of \_\_\_\_\_, 2018 (the “Governance Agreement”), hereby certifies that the Revenue Coverage for 20\_\_ is \_\_\_\_, as evidenced by the above calculation. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Governance Agreement.

Dated: \_\_\_\_\_, 20\_\_.

NORTHERN INDIANA COMMUTER  
TRANSPORTATION DISTRICT

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 8**

**West Lake Deficit Cost Submission Form**

To: RDA

From: NICTD

In accordance with the attached West Lake Operating Deficit Calculation, NICTD hereby certifies that the West Lake Operating Deficit is \$\_\_\_\_\_ for the period beginning \_\_\_\_\_ through \_\_\_\_\_ in accordance with the terms of the Governance Agreement.

NICTD Authorized Signature

\_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Enclosure: West Lake Operating Deficit Calculation dated \_\_\_\_\_

GROUND LEASE AGREEMENT (DOUBLE TRACK PROJECT)

between

NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

as Lessor

and

NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

as Lessee

Dated as of \_\_\_\_\_ 1, 20\_\_

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**GROUND LEASE AGREEMENT (DOUBLE TRACK PROJECT)**

This Ground Lease Agreement (Double Track Project) (this "Ground Lease") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT, a commuter transportation district and a municipal corporation formed pursuant to Indiana Code 8-5-15, as amended ("NICTD"), and the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, a separate body corporate and politic formed pursuant to Indiana Code 36-7.5, as supplemented and amended from time to time ("RDA").

**RECITALS**

1. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the hereinafter defined Governance Agreement;
2. The South Shore Line is a commuter train service between South Bend, Indiana and Millennium Station in Chicago, Illinois;
3. NICTD has owned and operated the South Shore Line for nearly forty years and has experience in developing capital rail projects for the South Shore Line and in requesting, obtaining and managing federal grant funds through the Federal Transit Administration;
4. RDA fosters development in northwest Indiana and has since its inception fostered economic development throughout northwest Indiana and has been vested pursuant to IC 36-7.5-4-18 with certain powers and duties with respect to the Rail Project;
5. IFA oversees State debt issuance and provides effective financing solutions to facilitate State, local and business investment in the State and has participated in numerous important economic development activities throughout the State;
6. RDA and NICTD have developed and advanced plans for improvements to the South Shore Line, specifically the Double Track Project and the West Lake Corridor Project, which will improve the South Shore Line and foster economic development throughout northwest and north central Indiana by shortening commute times, providing new rail service to areas not serviced by rail transportation to Chicago, enhancing the economic and community development of the northwest Indiana region, and increasing the convenience to the areas served;
7. RDA has determined that providing assistance to the Rail Project in the manner herein provided serves a public purpose for which RDA was created;
8. The Rail Project is expected to encourage business investment in and near the station areas, provide faster, less expensive and reliable transportation, relieve existing and anticipated traffic congestion, reduce vehicular emissions, reduce commuting costs and attract and retain families and younger residents in northwest and north central Indiana;
9. The Rail Project is expected to provide faster travel times, accommodate more trains to improve service during rush hour travel and be safer to operate;

10. RDA, IFA and NICTD have identified and obtained committed local and State funding for the Rail Project;

11. NICTD has applied for necessary federal grant funding from FTA on behalf of RDA and the State, and in its capacity as the grantee, and as the signatory party to that certain Full Funding Grant Agreement with FTA, will maintain continuing control of the assets receiving FTA funding, subject to the terms of the Governance Agreement, the Development Agreement, if any, this Ground Lease and the other leases described herein;

12. The Parties desire to jointly complete FTA grant application processes for the Double Track Project, in order to facilitate the further development, design, construction and financing of the Double Track Project as improvements to the South Shore Line commuter rail system;

13. Any obligations of RDA or IFA shall not constitute a debt of the State or any municipality, or a pledge of the full faith and credit thereof, under the Constitution of the State;

14. Providing financial support to the Rail Project and the development and operation thereof are valid public purposes of RDA, IFA and NICTD, will contribute importantly to the economic and community development of northwest Indiana and will benefit the citizens of northwest Indiana;

15. In connection with the IFA Bonds, RDA, NICTD, and IFA are required to enter into one or more leases for the purpose of providing for the issuance and repayment of the IFA Bonds;

16. The funding for the payment of lease rentals by RDA for payment of the IFA Bonds will be provided from State appropriations, FTA Grant Reimbursements, moneys on deposit in the next generation trust fund established under IC 8-14-15.2 and Member Dues;

17. NICTD expects that FTA funding will fund a portion of the costs of the Rail Project, subject to local funding of the remaining share;

18. NICTD, RDA, and IFA intend to enter into the Revenue Trust Fund Agreement with the Deposit Trustee and the Bond Trustee for the purposes of receiving and safeguarding substantially all funds for the Rail Project, including substantially all funding sources to be used to pay lease rentals;

19. RDA and IFA are willing to assist NICTD in providing a mechanism to fund the Rail Project pursuant and subject to the Governance Agreement and the Development Agreement and to comply with and advance the public purposes described herein;

20. In connection therewith and subject to this Ground Lease, certain Real Estate and Rail Improvements will be leased by NICTD to RDA pursuant to this Ground Lease, then leased by RDA to IFA pursuant to the Underlying Lease, then leased by IFA to RDA pursuant to the Master Leases, and then leased by RDA to NICTD pursuant to the Operating Lease, and IFA will issue the IFA Bonds and cause certain proceeds thereof to be made available to NICTD to pay costs incurred in undertaking the Rail Project;

21. Contemporaneous with or subsequent to the commencement of existence of the leasehold estate under this Ground Lease, RDA and IFA shall cause the Underlying Lease, IFA and RDA shall cause the Master Leases, and RDA and NICTD shall cause the Operating Lease, to each be effective; and

22. NICTD acknowledges that IFA's and RDA's right of occupancy and continuous possession of the Real Estate (and the Rail Improvements) and its lawful right to lease the Real Estate (and the Rail Improvements) throughout the stated term of this Ground Lease are essential to the funding mechanism for the Rail Project and the realization of the public purposes described herein.

WITNESSETH:

In consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

Section 1. Definitions; Interpretation.

(a) The terms defined in this Section shall for all purposes of this Ground Lease have the meanings herein specified unless the context otherwise requires.

"Ancillary Users" means any party that uses or has any interest in users of the Facilities of any kind whatsoever (including any subtenants, occupants, employees, agents, contractors, customers or invitees of NICTD).

"Authorized Officer of IFA" means the Chair of IFA or the Public Finance Director of the State of Indiana and, with reference to any act or document, also means any other person authorized by a resolution of IFA to perform such act or to sign such document.

"Authorized Officer of NICTD" means the President of NICTD and, with reference to any act or document, also means any other person authorized by a resolution of NICTD to perform such act or to sign such document.

"Authorized Officer of RDA" means the Chair or the Chief Executive Officer of RDA and, with reference to any act or document, also means any other person authorized by a resolution of RDA to perform such act or to sign such document.

"Biennium" means the biennium used for State budgetary and appropriation purposes.

"Bond Act" means Indiana Code 5-1.3, as amended or supplemented, or any successor thereto.

"Bond Trustee" means the trustee serving as such with respect to the IFA Bonds.

"Completion Certificate" for the Facilities or any portion thereof means a certificate (a) executed by an Authorized Officer of NICTD certifying that such Facilities or such portion thereof is available for use by RDA and (b) accepted by an Authorized Officer of RDA acknowledging that such Facilities or such portion thereof is available for use by RDA.

"Concurrence" means the written concurrence of the Authorized Officer of IFA and the Authorized Officer of RDA to the referred approval or other action of NICTD pursuant to the Governance Agreement, the Development Agreement or the Leases; *provided* that:

(a) concurrence may be withheld or delayed if the Authorized Officer of IFA and/or the Authorized Officer of RDA determines a referenced action (i) may adversely affect the Continuing Rent Obligation and (ii) be inconsistent with applicable laws (and the requirements of the Governance Agreement, the Development Agreement, the Leases and/or any documents related thereto);

(b) concurrence when given shall not be deemed to estop or otherwise waive IFA's and/or RDA's right to later assert or enforce any requirement under the Governance Agreement, the Development Agreement, the Leases and/or any documents related thereto, including IFA's and RDA's ability to seek claims, damages, losses and expenses, including attorneys' fees and other IFA and RDA costs arising out of or resulting from the action of NICTD for which concurrence has been given; and

(c) concurrence when given and later found to be contrary to any requirement under the Governance Agreement, the Development Agreement, the Leases and/or any documents related thereto shall not expose NICTD to a claim or assertion that such failure is, in and of itself, a failure to obtain a concurrence in the first instance and, as such, without having received a concurrence, a basis for a NICTD Event of Default. To the extent NICTD receives Concurrence under this Ground Lease it shall be able to rely upon such Concurrence.

"Continuing Rent Obligation" means (a) RDA's obligation under the Master Leases to continue to pay the Master Leases Rental and (b) NICTD's obligation under the Operating Lease to continue to pay the Operating Lease Rental, each without delay or diminution as to amount.

"Deposit Trustee" means the trustee bank acting as the Deposit Trustee under the Revenue Trust Fund Agreement.

"Development Agreement" means any development agreement entered into by NICTD, RDA and IFA for the purpose of governing the completion of the Rail Project in a manner consistent with and as contemplated by the Governance Agreement.

"Double Track Project" means the addition of an east/west rail line for a portion of the South Shore Line from Gary to Michigan City and related improvements, all as more fully described in Exhibit 1 of the Governance Agreement.

"Environmental Laws" means all federal, state and local statutes, common law principles, rules, regulations, ordinances, permits, licenses, written approvals, orders, writs, injunctions, judgments and consent decrees relating to pollution control, protection of environmental quality, or protection of the health or safety of workers or the public from exposure to Hazardous Materials, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or hazardous, toxic or dangerous substances, materials or wastes in the environment (including ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the generation, manufacture, processing, distribution,

use, treatment, storage, disposal, transport or handling of Hazardous Materials. Without limiting the generality of the foregoing, "Environmental Laws" shall encompass any "Superfund" or "Superlien" Law (including those otherwise referenced in this definition) and each of the following statutes and the regulations promulgated thereunder, in any similar applicable federal, state or local law, rule or regulation, each as amended: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980; (ii) the Solid Waste Disposal Act; (iii) the Hazardous Materials Transportation Act; (iv) the Toxic Substances Control Act; (v) the Clean Water Act; (vi) the Clean Air Act; (vii) the Safe Drinking Water Act; (viii) the National Environmental Policy Act of 1969; (ix) the Superfund Amendments and Reauthorization Act of 1986; (x) Title III of the Superfund Amendments and Reauthorization Act of 1986; (xi) the Federal Insecticide, Fungicide and Rodenticide Act; (xii) provisions of the Occupational Safety and Health Act of 1970 relating to the handling of and exposure to Hazardous Materials; and (xiii) any state or local analogue to any of the foregoing.

"Facilities" means the Real Estate and the Rail Improvements.

"FFGA" means the grant agreement awarded by FTA for the Rail Project.

"Force Majeure" shall have the meaning ascribed to such term in the Governance Agreement.

"FTA" means the Federal Transit Administration.

"FTA Grant Reimbursements" means funds received from FTA as reimbursement for expenditures by the Parties for moneys spent on one or both of the projects constituting the Rail Project pursuant to the FFGA for the Rail Project.

"Governance Agreement" means the Governance Agreement effective as of August 31, 2018, by and between NICTD, RDA and the IFA, as from time to time amended or supplemented in accordance with its terms.

"Ground Lease" means this Ground Lease Agreement (Double Track Project) as the same may be amended, modified or supplemented by any amendments or modifications hereof and supplements hereto entered into in accordance with the provisions hereof.

"Hazardous Materials" means any hazardous, toxic or dangerous substance, material and waste, including petroleum and hydrocarbon compounds derived from petroleum (including naturally occurring or man-made petroleum and derivative hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, solvents and/or any other similar substances, materials or wastes that are or become regulated under any Environmental Law as hazardous or toxic.

"IC" means the Title, Article, Chapter and/or Section of the Indiana Code as referenced, and as such may be supplemented, amended or replaced from time to time.

"IFA" means the Indiana Finance Authority, a body politic and corporate, not a State agency, but an independent instrumentality exercising essential public functions, organized and existing under IC 5-1.2, or if said Indiana Finance Authority shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof.

"IFA Bonds" means one or more series of bonds, notes or other similar obligations issued under IC 5-1.3-1 *et seq.* to finance or refinance all or a portion of the costs for the Rail Project;

"Including" or "including" in this Ground Lease shall be construed as if followed by the phrase "without limitation" or "but not limited to".

"Lease Premises" means the leasehold estate and interests created by and pursuant to this Ground Lease, including, without limitation, the leasing of the Facilities, as the same may be amended and modified from time to time as needed for the Rail Project in the manner as provided for in the Leases.

"Leases" means, collectively, this Ground Lease, the Underlying Lease, the Master Leases and the Operating Lease.

"Master Leases" means the various leases from IFA to RDA in support of the IFA Bonds, including specifically the State Appropriation Master Lease Agreement (Double Track Project), the RDA Member Dues Master Lease Agreement (Double Track Project) and the Federal Grant Anticipation Master Lease Agreement (Double Track Project), each as from time to time amended or supplemented by any amendment or supplement thereto, including any supplemental memorandum of lease recorded in connection therewith.

"Master Leases Rental" means the rental payments payable by RDA as provided in the Master Leases.

"Operating Lease" means the Operating Lease, dated as of \_\_\_\_\_ 1, 20\_\_, from RDA to NICTD as from time to time amended or supplemented by any amendment or supplement thereto, including any supplemental memorandum of lease recorded in connection therewith.

"Operating Lease Rental" means the rental payments payable by NICTD as provided in the Operating Lease.

"Member Dues" means the portion of the annual payments to RDA from the Cities of Gary, East Chicago and Hammond and the Counties of Lake and Porter due under Indiana Code 6-3.6-6-9, Indiana Code 36-7.5-4-2 and Indiana Code 6-3.6-11-6.

"Parties" means IFA, NICTD and RDA.

"Permitted Encumbrances" means (a) this Ground Lease, the Underlying Lease, the Master Leases and the Operating Lease, (b) utility, access and other easements, licenses and rights of way, covenants, conditions and restrictions, and other exceptions to title, which in each case will not materially and adversely affect the construction, development and operation of the Rail Project as contemplated by this Ground Lease or materially impair the interest of IFA, RDA

or NICTD in, or its use of, the Facilities, (c) any liens to the extent permitted in this Ground Lease, and (d) any other liens which are not prohibited under this Ground Lease, but only if in the opinion of counsel satisfactory to IFA and the Bond Trustee, such liens do not materially impair the interest of IFA, RDA or NICTD in, or its use of, the Facilities.

"Permitted Uses" means any use permitted under the Governance Agreement, subject to Section 24(b) hereof.

"Rail Project" means the Double Track Project, as defined in IC 5-1.3-2-14 and IC 36-7.5-1-13.5.

"Rail Improvements" means the existing improvements located on the Real Estate, together with any new improvements constructed (or placed for use) on the Real Estate, whether as part of the Rail Project or otherwise.

"Real Estate" means the real property described in Exhibit A attached hereto, as the same may be amended or modified in the manner provided herein and the other Leases.

"Revenue Trust Fund" means the development authority revenue fund established under the Revenue Trust Fund Agreement.

"Revenue Trust Fund Agreement" means the Revenue Trust Fund Agreement, dated as of \_\_\_\_\_, 20\_\_\_\_, entered into by and among RDA, IFA, NICTD, the Bond Trustee, and the Deposit Trustee in connection with the Revenue Trust Fund.

"State" means the State of Indiana.

"Supplemental Ground Lease" means any Ground Lease supplemental to this Ground Lease entered into in accordance herewith and substantially in the form set forth in Exhibit B.

"Trust Indenture" means the Trust Indentures to be entered into between IFA and the Bond Trustee relating to the IFA Bonds, and all supplements and amendments thereto.

"West Lake Corridor Project" means an approximately eight (8) mile new north/south passenger rail line connected to the existing South Shore Line located in Lake County, Indiana, with four stations from and including Hammond (Gateway Station) to and including Munster/Dyer (Main Street Station, including all property owned or leased by NICTD for the operation of the South Shore Line over the West Lake Corridor Project), all as more fully described in Exhibit 2 of the Governance Agreement.

(b) The terms "herein", "hereto", "hereunder" and all terms of similar import shall be deemed to refer to this Ground Lease as a whole rather than to any Section or Exhibit to this Ground Lease.

(c) Unless otherwise specified, references in this Ground Lease to (i) "Section \_\_\_" shall be deemed to refer to the Section of this Ground Lease bearing the number so specified, (ii) "Exhibit \_\_\_" shall be deemed to refer to the Exhibit of this Ground Lease bearing the letter

or number so specified, and (iii) this "Ground Lease" means this Ground Lease and any exhibits and attachments hereto.

(d) Captions used for or in Sections and Exhibits of this Ground Lease are for convenience of reference only and shall not affect the construction of this Ground Lease.

Section 2. Ground Lease of Facilities.

(a) In consideration of certain payments and other terms and conditions herein specified, NICTD does hereby lease, demise and let to RDA the Facilities (such constituting a part of the Lease Premises), to have and to hold the same with all rights, privileges, easements and appurtenances thereunto belonging unto RDA for a term beginning on the date hereof and ending on \_\_\_\_\_; *provided*, however, the term shall end earlier or later than such date in the event the conditions set forth in Section 17 hereof are met, in which case, the term shall end on such date (the "Term").

(b) The parties agree that the Rail Project will be undertaken on the Real Estate pursuant to the Governance Agreement and the Development Agreement. The parties acknowledge and agree that the Real Estate is available for use from and after the date hereof, and such availability for use (and the value thereof to RDA and NICTD) is not in any way diminished while the Rail Project is being undertaken. By one or more endorsements each recorded as soon as practical and as a Supplemental Ground Lease entered into in substantially the form set forth in Exhibit B, but in any event, when the Rail Improvements are complete and ready for use as part of the Rail Project, the parties shall revise or increase the real estate described in Exhibit A, if necessary to reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part of the Rail Project are constructed; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.

(c) NICTD hereby represents and warrants that, upon compliance with its obligations under Section 18 hereof, RDA will possess a good and indefeasible leasehold estate, subject only to Permitted Encumbrances, to all of the Real Estate, which includes real estate upon which the Rail Improvements that are part of the Rail Project are to be acquired, improved and constructed pursuant to the Governance Agreement and the Development Agreement, and NICTD warrants and will defend the same against all claims whatsoever not suffered or caused by the acts or omissions of RDA.

Section 3. Supplements; Nature of Obligations.

(a) NICTD acknowledges that it has received good, valuable, and sufficient consideration, including payment and reimbursement of certain costs and expenses from the proceeds of the IFA Bonds and other [Rail Project monies], from RDA and through IFA in respect of the rights and interests created by this Ground Lease. During the term of this Ground Lease, NICTD agrees that no additional payments by IFA or RDA to NICTD hereunder shall be made in respect of the rights and interests created by this Ground Lease.

(b) After the Commencement Date (as defined in the Master Leases), for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed or taken, so as to render such portion unavailable for use by RDA, or shall for any other reason become unavailable for use by RDA, NICTD may add additional Lease Premises to this Ground Lease pursuant to a Supplemental Ground Lease so that RDA may lease such additional Lease Premises to NICTD pursuant to a supplement to the Operating Lease; provided that such additional Lease Premises are also added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.

(c) During the term of this Ground Lease, NICTD and RDA may enter into one or more Supplemental Ground Leases in the event NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities in substantially the form set forth in Exhibit B, so that such portions are within the boundaries of the Facilities.

(d) It is expressly understood and agreed by RDA and NICTD that the obligations of RDA and NICTD created by or arising out of this Ground Lease or of any amendments hereto shall not be, represent, or constitute an indebtedness of the State, IFA or RDA within the meaning or application of any constitutional limitation of the State or the laws of the State or a pledge of the faith or credit of the State, IFA or RDA.

Section 4. Nature of Ground Lease. (a) It is expressly understood and agreed that this Ground Lease shall not be what is known as a net lease (i.e., that no expenses in connection with the Facilities of any nature whatsoever shall be those of RDA by reason of it being the tenant hereunder) and that during the Term, NICTD shall be solely obligated to pay at its sole cost and expense, without reimbursement from RDA, all costs of taxes and assessments, operations, maintenance and use in connection with or relating to the Facilities, including all costs and expenses of decoration, maintenance, utility, janitorial and all other services, repair or replacement of all parts of the Facilities or improvement of the Facilities, in the manner provided in Section 7 of the Operating Lease, except as otherwise provided in the Governance Agreement.

(b) NICTD shall cause any taxes due on the Rail Project to be timely paid to the applicable authorities, except to the extent of any good faith contests which have not yet been resolved, and it shall not assert any basis for taxation in respect of the Facilities that would negate or otherwise negatively impact any imposition or collection of taxes other than deductions, credits or other adjustments that would otherwise be applicable in the event the Leases were not in force or effect. The parties acknowledge and agree that this Ground Lease is, and is intended to be, a lease of real property including fixtures and mixed real and personal property (with any such personal property covered by this Ground Lease being incidental), and the Continuing Rent Obligation reflects lease payments which are made solely with respect to the lease of such real property.

(c) Except as otherwise provided in the Governance Agreement, NICTD shall retain all revenues from the operation of the Facilities, and except as otherwise provided in the Governance Agreement, neither IFA nor RDA shall have any responsibility to fund the ongoing costs, expenses and needs for operations, repairs, maintenance and replacements of or related to the Facilities.

Section 5. Nonliability of IFA or RDA. Except as otherwise provided in the Governance Agreement, neither IFA nor RDA shall be liable for damage caused by hidden defects or failure to keep the Facilities in repair and shall not be liable for any damage done or occasioned by or from any improvements, structures or equipment (including any stations, parking facilities, bridges, overpasses, crossings, switches, locomotives, railroad cars, utilities, plumbing, gas, water, boilers, steam or other pipes or sewage or the bursting or leaking of plumbing or heating fixtures or waste or soil pipe) in connection with the Facilities, nor for damage occasioned by natural events (whether occurring by age, wind, water, snow, ice, movements of earth, or otherwise). Neither IFA nor RDA shall be liable for any injury to NICTD, any Ancillary Users or any other person which injury occurs in, upon, about or near the Facilities howsoever arising. Neither IFA nor RDA shall be liable for damage to NICTD's property or to the property of any Ancillary Users or of any other person which may be located in, upon, about or near the Facilities. NICTD shall be responsible for preserving for the benefit of IFA and RDA usual and customary rights, claims and warranties against the persons or entities engaged to acquire, improve and construct any Facilities.

Section 6. Construction; Repairs and Maintenance; Alteration; Operations; Equipment or Furnishings.

(a) NICTD represents and covenants that the Rail Project has been or will be constructed in accordance with the terms and conditions of the Governance Agreement, the Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable approved plans and specifications therefor.

(b) NICTD shall keep and maintain the Facilities in good condition and repair in accordance with NICTD management practices in effect as of the date hereof and shall operate the Rail Project in an efficient and economical manner and in accordance with the Governance Agreement. NICTD shall make all necessary repairs, renewals, improvements and replacements to the Facilities and shall keep the Facilities in a clean and neat condition and in good and sound condition and repair, normal wear and tear excepted. The cost of such repairs, replacements and maintenance shall be (whether required because of the negligence, misuse or default of NICTD, any of its Ancillary Users, or otherwise) at NICTD's sole cost and expense, except as otherwise provided in the Governance Agreement.

(c) NICTD shall comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to NICTD, the Lease Premises and the Facilities. NICTD shall adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the Facilities and the operation thereof, and shall enforce such rules and regulations on a uniform basis.

(d) RDA shall comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to RDA, the Lease Premises and the Facilities. To the extent reasonably necessary, the RDA shall adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the Facilities and the operation thereof, and shall enforce such rules and regulations on a uniform basis.

(e) NICTD shall have the right, at its sole cost and expense, without Concurrence, to make all alterations, modifications and additions and to do all demolition, remodeling and

improvements it deems necessary or desirable to the Facilities, which do not materially reduce the rental value of the Lease Premises or adversely affect (i) the Continuing Rent Obligation and (ii) each referenced obligation that is required to be met by NICTD to be consistent with applicable law (including the Bond Act) and the requirements of the Governance Agreement, the Development Agreement, this Ground Lease, the Underlying Lease, the Master Leases, the Operating Lease and/or any documents related thereto. NICTD shall be liable to repair any damage to the Facilities resulting from such work.

(f) So long as this Ground Lease is in effect, NICTD may at any time and from time to time, at its sole cost and expense, install, modify, remove or replace items of moveable machinery, equipment, furnishings and other personalty in and upon the Facilities. All such personal property shall remain the sole property of NICTD, in which neither IFA nor RDA shall have any interest, and may be installed, modified, removed or replaced by NICTD at any time; *provided* that if such installation, modification, removal or replacement adversely affects (i) the Continuing Rent Obligation or (ii) any referenced obligation that is required to be met by NICTD to be consistent with applicable law (including the Bond Act) and the requirements of the Governance Agreement, the Development Agreement, the Underlying Lease, the Master Leases, the Operating Lease and/or any documents related thereto, then NICTD shall either: (y) repair and restore any and all damage to the Facilities resulting from the installation, modification, removal or replacement of any such property; or (z) compensate IFA and RDA for any loss in value to the Lease Premises (including any diminishment in the Master Leases Rental and Operating Lease Rental) resulting from the installation, modification or removal of any such property.

(g) NICTD shall maintain or cause to be maintained such performance bonds or performance insurance (in a manner consistent with the Governance Agreement) with respect to contracts it may enter into for construction of the Rail Improvements as are usually maintained by those constructing improvements and facilities similar to the Rail Improvements. If performance of any contract for construction of the Rail Improvements is not completed in accordance with its terms and, in the opinion of a registered engineer selected by NICTD and acceptable to IFA and RDA, the cost of completion of such performance shall not exceed the amount of proceeds from any performance bond or performance insurance to be received by reason of such noncompletion of performance and other amounts available therefor, NICTD shall complete or cause to be completed such performance in the manner provided in, and subject to the conditions of, the Governance Agreement. The proceeds of any performance bond paid on account of such noncompletion of performance shall be made available for, and to the extent necessary shall be applied to, the cost of such construction.

#### Section 7. Insurance.

(a) NICTD, in the manner as provided in the Governance Agreement prior to completion of the Rail Project, and thereafter at its sole cost and expense, shall, during the full term of this Ground Lease, keep the Facilities insured against physical loss or damage, however caused, and otherwise in the manner and on a basis required in the Governance Agreement and the Development Agreement and consistent with commercially reasonable practices and only with such exceptions as are ordinarily required by insurers of rail lines of a similar type (as provided by an industry standard special cause of loss (or its equivalent) property insurance

policy, which insurance shall not exclude flood or earthquake, but may provide for sublimits therefor), with good and responsible insurance companies. Such policies shall include terrorism coverage so long as the Terrorism Risk Insurance Program Reauthorization Act of 2015 [15 USC 6701] continues in its present form or an equivalent federal insurance program is available to NICTD. Such insurance shall be in an amount at least equal to the full replacement cost of such Facilities as reasonably determined by NICTD in consultation with an insurance consultant approved by RDA from and after the date the IFA Bonds are issued by IFA; *provided*, any reduction in excess of ten percent (10%) from the amount carried on the date this Ground Lease is entered into (including any reduction from any existing sublimits) shall only be permitted with Concurrence. In no event shall the insurance be in an amount which causes NICTD to be a co-insurer for the Facilities; *provided*, it is agreed that the provision of sublimits for earthquake and flood shall not be deemed to cause NICTD to be a co-insurer; *provided further* that such insurance may cover properties of NICTD other than the Facilities. Such insurance may contain a provision for a deductible in an amount that is customary and commercially reasonable, but not more than \$500,000 or such higher amount as from time to time determined by NICTD with Concurrence. After the occurrence of any insured casualty, NICTD agrees to pay the deductible amount of any loss to the Bond Trustee or such party directed by the Bond Trustee, as applicable, within ten (10) days following any request so made by IFA or RDA. A blanket property insurance form may be used if the insurance payable in respect of loss related to the Facilities is not less than the amount required by this Section and the insurance proceeds related to damage to or destruction of the Facilities are payable to the Bond Trustee for the IFA Bonds.

(b) During the full term of this Ground Lease, NICTD, in the manner as provided in the Governance Agreement prior to completion of the Rail Project, and thereafter at its sole cost and expense, shall also, at its sole cost and expense, maintain business income insurance in an amount at least equal to the Operating Lease Rental on the Lease Premises leased by NICTD under the Operating Lease for a period of (2) years against physical loss or damage of the type insured against pursuant to the preceding requirements of this Section. Such business income insurance policies shall be for the benefit of IFA, RDA, and the Bond Trustee and shall name the Bond Trustee for the IFA Bonds as loss payee, which payment to such Bond Trustee may be limited to circumstances where Master Leases Rental is not made by RDA pursuant to a Master Lease.

(c) After the occurrence of any insured casualty related to the Facilities, NICTD shall give notice to the Bond Trustee, IFA and RDA. Such notice shall be given within five (5) days following such casualty and shall tentatively describe the nature of the casualty together with sufficient additional information to permit IFA and RDA to ascertain NICTD's plans for addressing such loss or damage (and meeting its obligations under this Ground Lease, including the amount NICTD plans to reserve to meet the requirements thereof that result from any deductible applicable under its insurance policies).

(d) In the event that an insurance program is developed by NICTD and approved by RDA and IFA as provided in the Governance Agreement, that insurance program and the requirements thereof shall be substituted herein as the insurance coverage requirements for this Ground Lease to the extent in conflict herewith or in addition hereto.

Section 8. Use of Insurance and Condemnation Proceeds. (a) If all or any portion of the Facilities shall be damaged or destroyed or taken, NICTD shall, as expeditiously as possible, continuously and diligently prosecute, or cause to be prosecuted, repair, reconstruction or replacement thereof until completion. Within one hundred twenty (120) days after the occurrence of an event of damage or destruction to the Facilities or a taking thereof, NICTD, through any Authorized Officer of NICTD, shall deliver to RDA and the Bond Trustee the written opinion of engineer selected by NICTD and reasonably acceptable to RDA and IFA stating whether or not the conditions set forth above with respect thereto are satisfied. The proceeds of any insurance paid on account of such damage or destruction or taking (other than any rent loss insurance) shall be made available for, and to the extent necessary shall be applied to, the cost of such repair, reconstruction or replacement, or otherwise in accordance with the terms and conditions of this Ground Lease.

(b) Proceeds of insurance against damage to or destruction of the Facilities which are paid to the Bond Trustee as described herein shall be held by the Bond Trustee pursuant to the applicable Trust Indenture and used by NICTD in accordance with the provisions of this Ground Lease, the Underlying Lease, the Master Leases, the Operating Lease, the Governance Agreement and such Trust Indenture. Proceeds of any condemnation of the Facilities (or portion thereof) shall be paid to the Bond Trustee and held by the Bond Trustee pursuant to the applicable Trust Indenture and used by NICTD in accordance with the provisions of this Ground Lease, the Underlying Lease, the Master Leases, the Operating Lease, the Governance Agreement and the applicable Trust Indenture.

Section 9. Liability Insurance. NICTD shall, at all times during the full term of this Ground Lease, keep in effect Commercial General Liability Insurance (which insurance shall not exclude blanket contractual liability, broad form property damage, personal injury, or fire damage coverage) covering the Facilities and NICTD's use thereof against claims for bodily injury and property damage, and insuring NICTD, IFA and RDA in amounts and in the manner required by the Governance Agreement and the Development Agreement. Such policies shall include terrorism coverage so long as the Terrorism Risk Insurance Program Reauthorization Act of 2015 [15 USC 6701] continues in its present form or an equivalent federal insurance program is available to NICTD. NICTD shall maintain for each policy year during the term of this Ground Lease aggregate limits for liability coverages of not less than fifty percent (50%) of liability coverage amounts as in effect on the date this Ground Lease is entered into unless otherwise approved by RDA; *provided* that if such policy limits are not reasonably available in the insurance marketplace, then NICTD may reduce such aggregate coverage amounts to the highest such amounts as are reasonably available in the insurance marketplace existing from time to time. NICTD shall make IFA, RDA and the State additional insureds on such policies.

Section 10. General Insurance Provisions. All insurance policies required by Sections 7 and 9 hereof shall be issued in the manner provided in the Governance Agreement and the Development Agreement by good and responsible insurance companies, each of which companies, selected by NICTD and reasonably approved by RDA, shall be rated at least "A-VII" (or an equivalent rating if such rating scale is discontinued or changed) by A.M. Best & Company (or by an equivalent rating service if A.M. Best & Company is no longer providing such types of ratings) and shall be countersigned by an agent of the insurer who is a licensed agent in the State. Such policies, or copies thereof, shall be held by NICTD for review by IFA,

RDA and the Bond Trustee; *provided* that such policies shall be available for review by IFA, RDA and the Bond Trustee upon request, and shall be updated as changes are made to such policies. Such policies shall be subject to the requirement that in the event of a material reduction in policy limits or elimination of any coverages, NICTD will notify IFA, RDA and the Bond Trustee in writing by electronic or other means, with such notification including a description of the coverages so reduced or eliminated. If, at any time, NICTD fails to maintain insurance in accordance with Sections 7 and 9 hereof, such insurance may be obtained by IFA or RDA, or may be obtained by the Bond Trustee, and the amount paid for such insurance shall be payable by NICTD under this Ground Lease; *provided, however*, that neither IFA, RDA nor the Bond Trustee shall be under any obligation to obtain such insurance, and any action or non-action of RDA, IFA or the Bond Trustee in this regard shall not relieve NICTD of any consequences of a default in failing to obtain such insurance. The Bond Trustee shall be the loss payee on all casualty insurance required by this Ground Lease that becomes payable in respect of claims related to the Facilities.

Section 11. General Covenants. (a) NICTD covenants that, except for Permitted Encumbrances and any liens, charges, encumbrances, or security interests created by an act or omission of RDA and/or IFA, it will not mortgage, impose any lien or claim upon, or otherwise encumber the Lease Premises (whether actual, contingent or otherwise), or permit any mortgage, lien, claim or encumbrance to exist thereon, and that it shall use and maintain the Facilities in material compliance with the laws and ordinances of the United States of America, the State, and all other proper governmental authorities. NICTD agrees that it will, at the request of RDA, execute and deliver to or upon the request of RDA such instrument or instruments as may be reasonably required by RDA in order to assure or confirm RDA's interest in the Lease Premises pursuant to the terms hereof and shall also deliver, from time to time, such instrument or instruments as may be reasonably requested by RDA or any tenant or subtenant of RDA with respect to the covenant of quiet enjoyment contained in this Ground Lease, the Underlying Lease, the Master Leases, the Operating Lease, or the Governance Agreement.

(b) RDA covenants that, except for Permitted Encumbrances and any liens, charges, encumbrances, or security interests created by an act or omission of NICTD and/or IFA, it will not mortgage, impose any lien or claim upon, or otherwise encumber the Lease Premises (whether actual, contingent or otherwise), or permit any mortgage, lien, claim or encumbrance to exist thereon, and that it shall use and maintain the Facilities in material compliance with the laws and ordinances of the United States of America, the State, and all other proper governmental authorities.

Section 12. Covenants Regarding the Bond Act; IFA Bonds. NICTD shall timely comply with all requirements of NICTD created by the Bond Act, the Governance Agreement, the Development Agreement and any agreement or certificate executed by NICTD in connection with the issuance of the IFA Bonds.

Section 13. Utility Service. NICTD agrees to pay or cause to be paid all charges for (a) sewer, gas, water, electricity, light, heat or power utilities and services, (b) telephonic, communication and other information services, (c) other utility and like services, and (d) regulatory, track and freight fees and other fees, costs and expenses associated with the use and

operation of the Facilities that are used, rendered or supplied upon or in connection with the Facilities throughout the term of this Ground Lease.

Section 14. Environmental Laws Covenants.

(a) With respect to the Facilities, (i) NICTD shall at all times comply and follow commercially reasonable business practice to cause others to comply, in all material respects, with all Environmental Laws and all licenses, permits, certificates, approvals and similar authorizations issued to NICTD thereunder, and such operations shall not give rise to any liability pursuant to any Environmental Law, (ii) NICTD shall promptly notify RDA and IFA upon becoming aware of any investigation, proceeding, complaint, order, directive, claim, citation or written notice by any governmental authority or any other Person arising under or relating to any violation of any Environmental Law that is pending against NICTD or threatened in writing against NICTD and shall take prompt and appropriate actions to respond thereto and to cure such violation (if any) and (iii) NICTD shall promptly notify RDA and IFA upon becoming aware of any non-compliance with, or violation of, the requirements of any Environmental Law by NICTD in any material respect, or the release, spill, or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material or any other environmental, health or safety matter, which affects or gives rise to a material liability upon NICTD or any liability upon IFA or RDA.

(b) NICTD shall not cause or permit the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Materials on, under or about the Facilities, or the transportation to or from the Facilities of any Hazardous Materials, except as necessary and appropriate for its Permitted Uses, in which case, the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws and the standards prevailing in the railroad industry and at comparable facilities. Notwithstanding anything contained herein to the contrary, IFA and RDA shall not have any liability to NICTD resulting from any conditions existing, or events occurring, or any Hazardous Materials existing or generated, at, in, on, under or in connection with this Ground Lease or the Facilities, except to the extent caused directly by the sole negligence or willful misconduct of the IFA or RDA or their respective agents, employees, or contractors.

Section 15. Indemnity by NICTD. NICTD shall release, protect, defend, indemnify and hold harmless the RDA, IFA, the Bond Trustee, the Deposit Trustee, and their respective agents, employees, representatives and consultants, from and against any and all claims, causes of action, suits, judgments, demands, and/or losses, in each case if asserted or incurred by or awarded to any third party, arising out of or relating to or resulting from (a) NICTD's design, construction or operation of the Rail Projects or the South Shore Line, (b) any act, omission, negligence, or willful misconduct of NICTD, any of its Ancillary Users or anyone acting under its control or for whom it is legally responsible (c) failure of NICTD, or anyone acting under its control or for whom it is legally responsible, to perform or observe any requirement or obligation imposed by this Ground Lease and (d) arising out of any other act or occurrence within the Facilities. NICTD's indemnity obligation shall not extend to: (i) any third party claim to the extent directly caused by the negligence, recklessness, willful misconduct, or breach of any material obligation under this Ground Lease or the Governance Agreement by IFA or RDA, or

(ii) any claims, causes of action, suits, judgments, demands, and/or losses resulting from any action of the RDA or IFA during an Operations Step-In Period or resulting from any actions taken by the RDA or IFA after the exercise of any Construction Period Step-In Rights; provided, however, that nothing herein shall relieve NICTD of responsibility to pay up to the Maximum NICTD Excess Cost Contribution for Excess Construction Costs irrespective of the exercise of Construction Period Step-In Rights. The RDA and IFA shall have no obligation to indemnify NICTD.

Section 16. No Broker. NICTD hereby represents and warrants that no brokers or third-party involved in the negotiation and execution of this Ground Lease is entitled, as a result of the actions of the respective party, to a commission or other fee resulting from the execution of this Ground Lease.

Section 17. Transfer to NICTD. To the extent provided in the Governance Agreement, upon the later of the termination of the Governance Agreement and the final and full payment of all IFA Bonds, this Ground Lease shall terminate.

Section 18. Title to Real Estate.

(a) NICTD shall cause a final, fully paid, leasehold title insurance policy to be issued for the benefit of RDA by no later than the date the IFA Bonds are to be issued by IFA. In the event NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities, then by no later than the date as of which construction of any such portion commences, NICTD shall cause (i) an endorsement to be issued to, and on substantially the same terms as, the leasehold title insurance policy referenced in the prior sentence (or an additional final, fully paid, leasehold title insurance policy to be issued on substantially the same terms as the leasehold title insurance policy referenced in the prior sentence) to identify and insure thereunder any such necessary increase in the real estate described in Exhibit A and (ii) a Supplemental Ground Lease to be entered into in substantially the form set forth in Exhibit B in respect of such Real Estate; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.

(b) NICTD represents and warrants that it has a good and indefeasible estate in fee simple to all of the Real Estate, subject only to Permitted Encumbrances.

Section 19. Defaults; Remedies.

(a) If there is any NICTD Event of Default (including any default in the observance of any other covenant, agreement or condition contained in this Ground Lease) (each, an "Event of Default"), RDA may proceed to protect and enforce its rights, either at law or in equity, by suit, action, mandamus or other proceedings, whether for specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy (as contained in the Governance Agreement as may relate to this Ground Lease and such Event of Default); *provided* that all such rights and remedies taken in respect of this Ground Lease and any such Event of Default shall only be undertaken and pursued by RDA in strict conformity with this Section and the requirements and limitations set forth in the Governance Agreement.

(b) Except for extensions of time resulting from a Force Majeure event that are allowed in the Governance Agreement, time is of the essence of each term and provision of this Ground Lease to be observed by NICTD hereunder.

(c) If RDA shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Ground Lease, NICTD may pursue a claim for specific performance. If RDA shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Ground Lease and if NICTD shall, as a consequence thereof, recover a money judgment against RDA and/or IFA, NICTD agrees that (i) it shall look solely to RDA's and IFA's right, title and interest in and to the Lease Premises (which shall not include any right to set-off related to any payment due to RDA or IFA as required by the Governance Agreement, the Development Agreement, this Ground Lease, the Underlying Lease, the Master Leases, the Operating Lease and/or any documents related thereto) for the collection of such judgment, (ii) it shall not look to any other assets of RDA and/or IFA in the levy, execution or other process for the satisfaction of NICTD's judgment, and (iii) it shall not enforce any execution or other process for the satisfaction of NICTD's judgment, unless such does not: (A) materially reduce the rental value of the Lease Premises; (B) adversely affect the Continuing Rent Obligation; or (C) materially and adversely affect any obligation that is required to be met by NICTD pursuant to applicable laws (including the Bond Act) and requirements of the Governance Agreement, the Development Agreement, this Ground Lease the Underlying Lease, the Master Leases, the Operating Lease and/or any documents related thereto.

(d) Neither party's failure or delay in exercising any of its rights or remedies or other provisions of this Ground Lease shall constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any default shall be deemed to be a waiver of any other default. RDA's receipt of less than the full amount due as herein provided shall not be construed to be other than a payment on account of such amount then due, nor shall any statement on NICTD's check or any letter accompanying NICTD's check be deemed an accord and satisfaction. No act or omission by RDA (or IFA) or their respective employees or agents during the term of this Ground Lease shall be deemed an acceptance of a surrender of the Lease Premises hereunder, and no agreement to accept such a surrender shall be valid unless in writing and signed by RDA and IFA.

(e) Notwithstanding anything herein, IFA may proceed to protect and enforce any rights or interests of RDA and IFA under this Ground Lease in its own name or on behalf of RDA in the name of RDA in its place and stead.

Section 20. Notices.

(a) All notices, certificates, requests or other communications required hereunder shall be sufficient only if given in writing, prior to the matter requiring notice and shall be deemed given (i) one (1) business day after being deposited for next day delivery; (ii) three (3) business days after mailing when mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) the same day if hand delivered (or if sent by both facsimile and email) during a business day, addressed as follows:

To RDA: Northwest Indiana Regional Development Authority  
9800 Connecticut Drive

Crown Point, IN 46307  
Attention: President

With a Copy to: Ice Miller LLP  
One American Square 2900  
Indianapolis, IN 46282

To IFA: Indiana Finance Authority  
1 North Capitol, Suite 900  
Indianapolis, Indiana 46204  
Attention: Public Finance Director of the State of Indiana  
and General Counsel  
Facsimile (317) 232-6786 / Electronic mail (to  
DHuge@ifa.IN.gov; and ASeiwert@ifa.IN.gov)

To NICTD: Northern Indiana Commuter Transportation District  
33 East U.S. Highway 12  
Chesterton, Indiana 46304  
Attention: President and/or Chief Executive Officer

With a Copy to: Northern Indiana Commuter Transportation District  
33 E. US Highway 12  
Chesterton, IN 46304  
Attention: Office of General Counsel

(b) Any party hereunder may, by notice given hereunder, designate any further or different addressees to which subsequent notices, certificates, requests or other communications shall be sent.

Section 21. Construction of Covenants. All provisions contained herein shall be construed in accordance with the provisions of the Bond Act, the Governance Agreement and the Development Agreement and to the extent of any material inconsistencies between the covenants and agreements in this Ground Lease, the Governance Agreement, and the Development Agreement and the provisions of the Bond Act, the provisions of the Bond Act, then the Governance Agreement, then this Ground Lease, and then the Development Agreement, shall be deemed to be controlling and binding upon the parties.

Section 22. Supplemental Ground Leases. RDA and NICTD may, from time to time hereafter, enter into one or more Supplemental Ground Leases, each of which: (a) shall provide that all covenants contained in this Ground Lease shall be unitary and include all parts of the Lease Premises, whether leased pursuant to this original Ground Lease or pursuant to any Supplemental Ground Lease (*provided* that the foregoing shall not limit or restrict the parties from having differing covenants and obligations applicable to any Supplemental Ground Leases related to portions of the Rail Project NICTD proposes to be constructed that are not within the existing boundaries of the Facilities); and (b) may contain such other covenants and agreements as the parties thereto agree upon.

Section 23. No Personal Liability. No recourse shall be had for any payment due under this Ground Lease or for any claim based thereon or upon any obligation, covenant or agreement in this Ground Lease contained against any past, present or future member, officer, employee, agent or official of IFA, RDA or NICTD, or any successor thereof, either directly or through IFA, RDA or NICTD, or any successor thereof, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability for any such person is hereby expressly waived and released as a condition of and consideration for the execution of this Ground Lease and issuance of the IFA Bonds.

Section 24. Successors or Assigns; Use Restrictions.

(a) All covenants of this Ground Lease, whether by RDA or NICTD, shall inure to the benefit of and be binding upon the permitted successors and assigns of the respective parties hereto. This Ground Lease shall not be assigned by NICTD without the prior written consent of RDA and IFA, and in such event the assignor shall not be relieved of its obligations hereunder unless permitted by RDA and IFA. This Ground Lease may be assigned by RDA to IFA without the prior written consent of NICTD, as and to the extent permitted by the Bond Act. Any assignment in contravention of this Section shall be null and void *ab initio*.

(b) Notwithstanding any other provision of this Ground Lease to the contrary, NICTD covenants that it: (a) will not use or permit the Facilities or any portion thereof for any private business use within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended from time to time, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, and (b) will comply with Section 148(f) of the Internal Revenue Code of 1986, as amended from time to time. Any agreement entered into by NICTD in violation of this Section 24 shall be of no force or effect and shall not convey any rights or impose any obligation in respect to it, at law or in equity.

(c) Requests for consent to private business use shall be sent in writing by NICTD to IFA and RDA. Each such request shall include a final draft of the proposed conveyance, lease, sublease, management or incentive payment contract, license or other agreement that may give rise to such private business use, together with a description of the timing and the rationale for entering into such agreement (the "Proposed Private Business Use"). IFA and RDA shall conduct their review and approve or reject, in writing, such request within 30 days of receipt. If no response is made to a request for consent to private business use within 30 days of receipt, then NICTD shall provide additional written notice to IFA and RDA that the Proposed Private Business Use will be deemed to be approved. If no response to this additional written notice is received within three business days of receipt of the additional written notice by IFA and RDA, then the request shall be deemed approved. In the event a request for consent to private business use is deemed approved, NICTD shall have the right to proceed as though consent to the Proposed Private Business Use was expressly provided by IFA and RDA. In any event, upon the execution and delivery by NICTD of any such agreement, NICTD shall provide IFA and RDA a copy of such executed agreement within 10 business days of the execution thereof.

Section 25. Validity. All terms, covenants and conditions contained in this Ground Lease shall include all parts of the Facilities, whether leased pursuant to the original Ground Lease or pursuant to any Supplemental Ground Lease thereto.

Section 26. Severability; Complete Agreement; Counterparts; Survival of Terms; Governing Law; Etc.

(a) All the covenants, agreements, terms and conditions required under the laws of the State, including the Bond Act, to be included in any lease entered into under Indiana Code 5-1.3-5 are incorporated herein by this reference.

(b) In case any section or provision of this Ground Lease, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Ground Lease, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Ground Lease or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Ground Lease, which shall be construed and enforced as if that illegal, invalid or inoperable portion were not contained herein. Any such illegality, invalidity or inoperability of any application thereof shall not affect any legal, valid and operable application thereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

(c) This Ground Lease represents the entire agreement between RDA and NICTD covering everything agreed upon or understood in the creation of the estate created by this Ground Lease and related transactional matters; *provided*, however, that the parties contemplate and agree that the provisions of the Governance Agreement, the Development Agreement, the other Leases and/or any documents related thereto contain related undertakings and such shall be given their full meaning and effect. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Ground Lease except by a written agreement executed by RDA and NICTD.

(d) The parties each acknowledge that the terms and conditions of this Ground Lease have been the subject of active and complete negotiations represented by competent professional counsel and advisors, and that such terms and conditions should not be construed in favor of or against any party by reason of the extent to which any party or its professional counsel and advisors participated in the preparation of this Ground Lease.

(e) This Ground Lease may be executed in duplicate counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

(f) The covenants and obligations under Sections 5, 12, 14, 15, 19, and 23 hereof shall survive the expiration or earlier termination of this Ground Lease.

(g) This Ground Lease shall be construed according to, and subject to, the laws of the State.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Ground Lease to be executed for and on their behalf as of the day and year first hereinabove written.

**"NICTD"**

**NORTHERN INDIANA COMMUTER  
TRANSPORTATION DISTRICT, AS  
LESSOR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[REMAINDER OF PAGE LEFT BLANK]

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northern Indiana Commuter Transportation District ("NICTD"), and acknowledged the execution of the foregoing Ground Lease Agreement (Double Track Project) for and on behalf of NICTD.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)  
Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

[REMAINDER OF PAGE LEFT BLANK]



*This instrument prepared by: Philip C Genetos, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, IN 46282.*

*I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Philip C Genetos*

**EXHIBIT A**

**LEGAL DESCRIPTION AND MAP OF THE REAL ESTATE**

**Map of the Real Estate.** Real property in \_\_\_\_\_  
\_\_\_\_\_, as depicted as follows:

[End of Exhibit A]

**EXHIBIT B**  
**FORM OF**  
**SUPPLEMENTAL GROUND LEASE AGREEMENT (DOUBLE TRACK PROJECT)**  
**BETWEEN**  
**NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT**  
**AND**  
**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY**

SUPPLEMENTAL GROUND LEASE AGREEMENT (DOUBLE TRACK PROJECT)  
BETWEEN  
NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT  
AND  
NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

This SUPPLEMENTAL GROUND LEASE AGREEMENT (DOUBLE TRACK PROJECT) (this "Supplemental Ground Lease"), entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT, a commuter transportation district and a municipal corporation formed pursuant to Indiana Code 8-5-15, as supplemented and amended from time to time ("NICTD"), and the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, a separate body corporate and politic formed pursuant to Indiana Code 36-7, as supplemented and amended from time to time ("RDA").

WITNESSETH:

WHEREAS, NICTD entered into a Ground Lease Agreement (Double Track Project) with RDA dated as of \_\_\_\_\_ 1, 20\_\_ (the "Ground Lease"); and

WHEREAS, all terms not otherwise defined in this Supplemental Ground Lease shall have the meanings ascribed to them in the Ground Lease; and

[WHEREAS, it is provided in the Ground Lease that after the Commencement Date, for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed or taken, so as to render such portion unavailable for use by RDA, or shall for any other reason become unavailable for use by RDA, NICTD may add additional Lease Premises to the Ground Lease pursuant to a Supplemental Ground Lease so that RDA may lease such additional Lease Premises to NICTD pursuant to a supplement to the Operating Lease; provided that such additional Lease Premises are also added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Ground Lease that in the event NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities, then by no later than the date as of which construction of any such portions commences, NICTD shall cause a Supplemental Ground Lease to be entered into for the purpose of adding to the Real Estate the pertinent real estate on which such portions of the Rail Project shall be located; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Ground Lease that when the Rail Improvements are complete and ready for use as part of the Rail Project, the parties shall revise and increase the real estate described in Exhibit A to the Ground Lease, if necessary to reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part of the Rail Project have been constructed; provided that such additional Real Estate is also added to the

Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Ground Lease that RDA and NICTD may enter into one or more Supplemental Ground Leases, each of which: (1) shall provide that all covenants contained in the Ground Lease shall be unitary and include all parts of the Lease Premises, whether leased pursuant to the Ground Lease or pursuant to any Supplemental Ground Lease (*provided* that the foregoing shall not limit or restrict the parties from having differing covenants and obligations applicable to any Supplemental Ground Leases related to portions of the Rail Project NICTD proposes to be constructed that are not within the existing boundaries of the Facilities); and (2) may contain such other covenants and agreements as the parties thereto agree upon.]

NOW, THEREFORE, IT IS HEREBY AGREED, CERTIFIED AND STIPULATED by the undersigned as follows:

[Section 1. Addition to Real Estate After Commencement Date. Certain portions of the Lease Premises have been damaged or destroyed, thereby rendering such portions unavailable for use by RDA, or have otherwise become unavailable for use by RDA. NICTD has determined to add additional Lease Premises to the Ground Lease pursuant to this Supplemental Ground Lease. Therefore, the Lease Premises set forth in Exhibit A to the Ground Lease shall be hereafter amended to read as set forth in Appendix I attached hereto, so that RDA may lease such additional Lease Premises to NICTD pursuant to a supplement to the Operating Lease, thereby resulting in no interruption in the lease rentals payable by NICTD to RDA pursuant to the Operating Lease. Such additional Lease Premises are also being added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.]

[Section   . Addition to Real Estate Prior to Construction. NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities set forth in Exhibit A to the Ground Lease. Therefore, the boundaries of the Facilities set forth in Exhibit A to the Ground Lease shall be hereafter amended to read as set forth in Appendix I attached hereto, which revised boundaries shall include the pertinent real estate on which such portions of the Rail Project shall be located. Such additional Real Estate is also being added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.]

[Section   . Addition to Real Estate After Construction. Certain Rail Improvements are now complete and ready for use as part of the Rail Project, and it is now necessary to revise or increase the real estate described in Exhibit A to the Ground Lease, because such Exhibit A does not reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part of the Rail Project have been constructed. Therefore, for such purpose, Exhibit A to the Ground Lease shall be hereafter amended to read as set forth in Appendix I attached hereto. Such additional Real Estate is also being added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.]

Section \_\_. All covenants contained in the Ground Lease, including this Supplemental Ground Lease, shall be unitary and include all parts of the Lease Premises, whether leased pursuant to the Ground Lease or pursuant to any Supplemental Ground Lease.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have caused this Supplemental Ground Lease to be executed for and on their behalf as of the day and year first above written.

"NICTD"

NORTHERN INDIANA COMMUTER  
TRANSPORTATION DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

"RDA"

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This instrument prepared by: \_\_\_\_\_

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northern Indiana Commuter Transportation District ("NICTD"), and acknowledged the execution of the foregoing Supplemental Ground Lease Agreement (Double Track Project) for and on behalf of NICTD.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

[REMAINDER OF PAGE LEFT BLANK]

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northwest Indiana Regional Development Authority ("RDA"), and acknowledged the execution of the foregoing Supplemental Ground Lease Agreement (Double Track Project) for and on behalf of RDA.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

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[APPENDIX I

LEGAL DESCRIPTION AND MAP OF THE REAL ESTATE]

**UNDERLYING LEASE AGREEMENT (DOUBLE TRACK PROJECT)**

**by and between**

**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY**

**and**

**INDIANA FINANCE AUTHORITY**

**Dated as of [\_\_\_\_\_], 20\_\_**

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**UNDERLYING LEASE AGREEMENT (DOUBLE TRACK PROJECT)**

**by and between**

**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY**

**and**

**INDIANA FINANCE AUTHORITY**

This UNDERLYING LEASE AGREEMENT (DOUBLE TRACK PROJECT) made and entered into as of [\_\_\_\_\_], 20\_\_ (this "Agreement"), by and between the Northwest Indiana Regional Development Authority ("RDA" or the "Lessor"), a separate body corporate and politic formed pursuant to Indiana Code 36-7.5 (the "RDA Act"), and the Indiana Finance Authority ("IFA" or the "Lessee"), a body politic and corporate duly organized and validly existing under and pursuant to Indiana Code 5-1.2 (the "IFA Act");

**WITNESSETH:**

WHEREAS, the Northern Indiana Commuter Transportation District ("NICTD"), a commuter transportation district and a municipal corporation formed pursuant to Indiana Code 8-5-15 (the "NICTD Act"), and RDA have entered into a ground lease (the "Ground Lease") pursuant to which NICTD has leased to RDA all right, title and interests of NICTD in and to certain property described in the Ground Lease (the "Lease Premises"), including any property acquired by NICTD from time to time and leased to RDA as provided in the Ground Lease, on such terms and conditions as prescribed therein;

WHEREAS, the purpose of this Agreement is to lease from RDA to IFA all right, title and interests of the RDA in and to the Lease Premises leased to RDA under the Ground Lease;

WHEREAS, as a result of this Agreement, IFA will be authorized to finance through the issuance of bonds, notes or other obligations pursuant to Indiana Code 5-1.3, the development of the Rail Project (as defined herein) through a lease financing structure pursuant to which IFA shall, pursuant to one or more Master Leases (as defined herein), lease to RDA the Rail Project as constructed and when completed;

WHEREAS, as to be required by the Master Leases, RDA shall then lease the Rail Project to NICTD pursuant to the Operating Lease (as defined herein) so that NICTD will be obligated to construct, acquire, develop, operate and maintain the Rail Project in the manner provided in the Governance Agreement [and the Development Agreement]; and

WHEREAS, the Lessor and the Lessee have agreed to record a Memorandum of Lease contemporaneous with the execution of this Agreement;

In consideration of the mutual covenants herein set forth, the parties agree as follows:

ARTICLE I

DEFINITIONS AND GENERAL PROVISIONS

Section 1.01. Definitions. The following words and terms, as used in this Agreement or in any Supplemental Agreement or other amendment or supplement hereto, shall have the following meanings unless otherwise provided for in this Agreement or such Supplemental Agreement or other amendment or supplement, unless the context or use clearly indicates another or different meaning or intent:

"Agreement" shall mean this Underlying Lease Agreement (Double Track Project) as from time to time amended or supplemented by any Supplemental Agreement and Supplemental Memorandum of Lease or other amendment or supplement hereto.

"Fiscal Year" shall mean the twelve-month period commencing on July 1 of each year and ending on the succeeding June 30, or such other fiscal year of IFA as may be mandated by law.

"Governance Agreement" shall mean the Governance Agreement effective as of August 31, 2018, by and between NICTD, the RDA and the IFA, as from time to time amended or supplemented in accordance with its terms.

"Ground Lease" means the Ground Lease Agreement (Double Track Project), dated as of [\_\_\_\_\_] from NICTD to RDA of the Lease Premises, which Lease Premises shall then be leased by RDA to IFA pursuant to this Agreement.

"IFA Bond Act" shall mean Indiana Code 5-1.3, as amended or supplemented, or any successor thereto.

"Lease Premises" shall mean all property described in Exhibit B attached hereto, including without limitation, any and all Lease Premises leased to RDA by NICTD under the Ground Lease.

"Lessee" shall mean IFA.

"Lessor" shall mean RDA.

"Master Lease" or "Master Leases" shall mean the one or more Master Leases entered into or to be entered into from IFA to RDA that provides for financing the Rail Project through lease rental payments from RDA to IFA and obligates RDA to cause NICTD, pursuant to the Operating Lease, to acquire, construct, develop, operate and maintain the Rail Project in the manner provided by the Governance Agreement [and Development Agreement].

"Memorandum of Lease" shall mean the Memorandum of Lease, a form of which is set forth in Exhibit C attached hereto, which is to be recorded contemporaneous with the execution of this Agreement for the purpose of identifying the Lease Premises.

"Operating Lease" shall mean the lease, dated as of [\_\_\_\_\_] from RDA to NICTD of the Rail Project Property, including the Rail Project Property leased to RDA by IFA pursuant to the

Master Leases, pursuant to which Operating Lease NICTD shall agree to acquire, construct, develop, operate and maintain the Rail Project in the manner provided by the Governance Agreement [and Development Agreement].

"Rail Project" shall mean the project described in Exhibit A attached hereto (the "Double Track Project").

"Rail Improvements" shall mean the existing improvements located on the Real Estate, together with any new improvements constructed (or placed for use) on the Real Estate, whether as part of the Rail Project or otherwise.

"Rail Project Property" shall mean all real and personal property interests, including, but not limited to, the Lease Premises, the Rail Improvements, and such easements, licenses, leases, or property rights, in whatever form reasonably necessary to construct and operate the Rail Project, but not including NICTD rolling stock, except to the extent any costs for rolling stock are included in the applicable Cost Budget (as defined in the Governance Agreement), as the Rail Project is identified and described in Exhibit A attached hereto.

"Real Estate" means the real property described in Exhibit B attached hereto, as the same may be amended or modified in the manner provided herein.

"State" shall mean the State of Indiana.

"Supplemental Agreement" shall mean any agreement supplemental or amendatory of this Agreement entered into in accordance with Article III.

"Supplemental Memorandum of Lease" shall mean each Supplemental Memorandum of Lease recorded in connection with the addition of Lease Premises in the manner provided in Section 2.04 hereof.

Section 1.02. Incorporation by Reference. The provisions of the Ground Lease, Master Leases, Operating Lease and Governance Agreement [and Development Agreement] are hereby incorporated herein by reference.

Section 1.03. Interpretations. Unless the context indicates otherwise, words importing the singular number shall include the plural number and words importing the plural number shall include the singular number. The terms "hereof," "herein," "hereby," "hereto," "hereunder" and similar terms mean this Agreement.

## ARTICLE II

### LEASE AND MAINTENANCE OF THE RAIL PROJECT PROPERTY

Section 2.01. Lease of the Rail Project Property. In consideration of the rents, covenants and agreements contained herein, the Lessor does hereby demise and lease to the Lessee, and the Lessee does hereby rent and lease from the Lessor, the Lease Premises.

Section 2.02. Term of Lease. The term of this Agreement shall commence on the date hereof and shall terminate on \_\_\_\_\_; provided the term shall end earlier or later than such date, in the event the Governance Agreement is terminated and all bonds, notes or other financing provided by IFA for the Rail Project are fully paid or their payment is fully provided for, in which case, the term shall end on such date. Upon the expiration or termination of this Agreement, the ownership of all Lease Premises and Rail Project Property shall revert to NICTD.

Section 2.03. Operation and Maintenance. RDA shall cause NICTD, pursuant to the Ground Lease and the Operating Lease, to operate and maintain the Rail Project Property during the term of this Agreement in an efficient and economical manner and to maintain the same in good repair and sound operating condition and make all necessary repairs, renewals, replacements and improvements thereto. RDA shall cause NICTD, pursuant to the Ground Lease and the Operating Lease, to comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to NICTD, RDA and the Rail Project Property. RDA shall cause NICTD, pursuant to the Governance Agreement, the Ground Lease and the Operating Lease, to adopt and keep in force reasonable rules and regulations governing the use of the Rail Project Property and the operation thereof, and enforce such rules and regulations.

Section 2.04. Additional Lease Premises. Whenever, pursuant to the Ground Lease, NICTD leases to RDA additional Lease Premises by execution of a supplemental agreement or memorandum to the Ground Lease, the Lease Premises shall become, by the recording of a Supplemental Memorandum of Lease, the same Lease Premises that are leased to RDA by NICTD under the Ground Lease.

### ARTICLE III

#### RENTS

Section 3.01. Payment. The IFA shall pay, in arrears, without relief from valuation or appraisal laws and without a defense of set-off, counterclaim or recoupment, an annual rental for the Lease Premises, in an amount equal to One Dollar, payable to the Lessor during the term hereof on the first day of each Fiscal Year after the date hereof.

Section 3.02. Supplemental Agreements. The Lessor and the Lessee may, on the date hereof and from time to time thereafter, enter into one or more Supplemental Agreements which shall contain such covenants and agreements as the parties agree upon.

### ARTICLE IV

#### MISCELLANEOUS

Section 4.01. Power to Agree. The Lessor and the Lessee each covenant to the other that the execution and delivery of this Agreement has been duly authorized by all necessary action, and that this Agreement has been duly executed and delivered, and constitutes a legal, valid and binding agreement in accordance with its terms and provisions.

Section 4.02. Effectiveness. This Agreement shall be effective from and after the date hereof, through the date on which this Agreement shall terminate in accordance with Section 2.02.

Section 4.03. Notices. All notices required or authorized to be given pursuant to this Agreement shall be in writing and shall be served personally or sent by certified mail to the main office of the party or parties to be notified, and the effective date thereof shall be the date of delivery, if served personally, or the date it is deposited in the mail, if mailed.

Section 4.04. Severability. In case any section or provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, that illegality, invalidity or inoperability shall not affect the remainder hereof or any other section or provision of this Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, which shall be construed and enforced as if that illegal, invalid or inoperable portion were not contained herein. Any such illegality, invalidity or inoperability of any application shall not affect any legal, valid and operable application, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 4.05. Table of Contents; Captions. The Table of Contents included in this Agreement and the captions included throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 4.06. Governing Law. This Agreement shall be construed according to, and subject to, the laws of the State.

Section 4.07. Successors and Assigns. The rights and obligations of either party under this Agreement shall not be assignable by such party without the prior written consent of the other party. This Agreement shall inure to the benefit and shall be binding upon the respective successors and permitted assigns of the parties. Nothing herein expressed or implied is intended to confer upon any person, other than the parties or their respective successors or permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

**NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**INDIANA FINANCE AUTHORITY**

By: \_\_\_\_\_

Cristopher R. Johnston, Chair

Attest:

\_\_\_\_\_

Dan Huges, Public Finance Director of the  
State of Indiana

Approved as to form and substance:

STATE BUDGET AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_, State Budget Director

Approved as to form and legality:

ATTORNEY GENERAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

### DOUBLE TRACK PROJECT

The Double Track Project includes implementing double-tracking and platform upgrades at five stations along a 26.6 mile-segment of the SSL between Gary and Michigan City, Indiana. Approximately 8.7 miles of double track already exists, and minimal construction would take place in this section. Within the remaining 16.4 mile segment, a new second main track would be constructed, mostly within existing railroad right-of-way (ROW) and next to the existing track. Additionally, in Michigan City, the street running tracks on 10<sup>th</sup> and 11<sup>th</sup> Streets would be removed and two new tracks would be constructed from Sheridan Avenue to Michigan Boulevard. Approximately 7.9 miles of active passing sidings exist along the route and would be used as the second main track to help reduce project scope and cost. Five platform upgrades would occur at the following stations:

- **Gary/Miller Station:** Construct two new high level platforms, two 8-car storage tracks for additional rush hour trains, a station house, and additional parking.
- **Portage/Ogden Dunes Station:** Construct two new high-level platforms and additional parking.
- **Dune Park Station:** Construct second boarding platform, re-align Calumet Trail under State Route (SR) 49 bridge, and construct additional parking.
- **Beverly Shores Station:** Construct two low level platforms.
- **Michigan City/11<sup>th</sup> Street Station:** Remove street-running tracks along 10<sup>th</sup> and 11<sup>th</sup> Streets; construct two new tracks south of the 10<sup>th</sup> Street ROW from Sheridan Avenue to Chicago Street (where it crosses Amtrak), two new tracks along 11<sup>th</sup> Street, two high-level platforms, and a new station house at 11<sup>th</sup> Street Station; and convert 11<sup>th</sup> Street to one-way auto traffic.

**EXHIBIT B**

**LEASE PREMISES**

(See attached)

**EXHIBIT C**

**FORM OF MEMORANDUM OF LEASE**

**STATE APPROPRIATION MASTER LEASE AGREEMENT  
(DOUBLE TRACK PROJECT)**

**by and between**

**INDIANA FINANCE AUTHORITY  
as Lessor**

**and**

**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY  
as Lessee**

**Dated as of \_\_\_\_\_ 1, 20\_\_**

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**STATE APPROPRIATION MASTER LEASE AGREEMENT  
(DOUBLE TRACK PROJECT)**

This STATE APPROPRIATION MASTER LEASE AGREEMENT (DOUBLE TRACK PROJECT) made and entered into as of the first day of \_\_\_\_\_, 20\_\_ (this "Agreement"), by and between the INDIANA FINANCE AUTHORITY, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State of Indiana (the "IFA"), pursuant to Indiana Code 5-1.2, and the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, duly created and existing under and by virtue of Indiana Code 36-7.5 (the "RDA");

WITNESSETH:

WHEREAS, this Agreement is designed to provide a master leasing structure with respect to various portions of the Rail Project defined herein that relate to bonds issued by IFA for the Rail Project and are payable from the Funding Source set forth herein (the "Related IFA Bonds");

WHEREAS, as additional series of Related IFA Bonds are authorized to provide additional funding for the Rail Project, IFA and RDA shall describe the Additional Project to be funded from that specific series of Related IFA Bonds and the lease rentals payable by RDA with respect thereto in a Supplemental Agreement; and

WHEREAS, it is the parties' intent that the terms within Indiana Code 5-1.3-5-2(a) are all contained herein and fulfilled;

In consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND GENERAL PROVISIONS

Section 1.01. Definitions. The following words and terms as used in this Agreement or in any Supplemental Agreement or other amendment or supplement hereto shall have the following meanings unless provided for in this Agreement or in any Supplemental Agreement or other amendment or supplement hereto, unless the context or use clearly indicates another or different meaning or intent:

"Act" shall mean Indiana Code 5-1.3, as amended or supplemented, or any successor thereto.

"Additional Lease Premises" shall mean any additional real property that is acquired for the Rail Project or an Additional Project with the proceeds of any series of Related IFA Bonds or incorporated therein in connection with any series of Related IFA Bonds, which is added to this Agreement pursuant to the terms set forth in Section 3.05.

"Additional Project" shall mean an additional portion of the Rail Project that becomes part of the Lease Premises in the manner provided in Section 3.06.

"Agreement" shall mean this State Appropriation Master Lease Agreement (Double Track Project) as from time to time amended or supplemented by any Supplemental Agreement or other amendment or supplement hereto, including a Supplemental Memorandum of Lease.

"Authorized Officer of IFA" shall mean the Chair of IFA or the Public Finance Director of the State of Indiana and, with reference to any act or document, also means any other person authorized by a resolution of IFA to perform such act or to sign such document.

"Authorized Officer of RDA" shall mean the Chair or the Chief Executive Officer of RDA and, with reference to any act or document, also means any other person authorized by a resolution of RDA to perform such act or to sign such document.

"Available Portion" shall mean, collectively, the portions of the Lease Premises that are available for use.

"Biennium" shall mean the biennium used for State budgetary and appropriation purposes.

"Bond Trustee" shall mean the trustee bank serving as Trustee for the Related IFA Bonds.

"Commencement Date" for any Lease Premises or any portion thereof shall mean the date on which a Completion Certificate for such Lease Premises or such portion thereof is accepted by an Authorized Officer of RDA.

"Completion Certificate" for any Lease Premises or any portion thereof shall mean a certificate (a) executed by an Authorized Officer of IFA certifying that such Lease Premises or such portion thereof is available for use by RDA and (b) accepted by an Authorized Officer of RDA acknowledging that such Lease Premises or such portion thereof is available for use by RDA.

"Construction" shall mean constructing, acquiring, renovating, rehabilitating, reconstructing, improving, extending or equipping the Rail Project or the Lease Premises or any portion thereof.

"Deposit Trustee" shall mean the trustee bank acting as the Deposit Trustee under the Revenue Trust Fund Agreement.

"Development Agreement" shall mean any development agreement entered into by NICTD, RDA and IFA for the purpose of governing the completion of the Rail Project in a manner consistent with and as contemplated by the Governance Agreement.

“Effective Date” shall mean the date of execution and delivery of this Agreement, which is \_\_\_\_\_, 20\_\_.

"Fiscal Year" shall mean the twelve-month period commencing on July 1 of each year and ending on the succeeding June 30, or such other fiscal year of the State as may be mandated by law.

“Funded Interest Date” shall mean the date until which the proceeds of a series of Related IFA Bonds are expected to pay the interest thereon. The Funded Interest Date for that portion of the Rail Project being financed with the initial series of the Related IFA Bonds is \_\_\_\_\_, 20\_\_.

“Funding Source” shall mean the Biennium appropriations contemplated to be made by the Indiana General Assembly to RDA to pay lease rentals on the Related IFA Bonds.

"Governance Agreement" shall mean the Governance Agreement effective as of August 31, 2018, by and among NICTD, RDA and IFA, as from time to time amended or supplemented in accordance with its terms.

“Ground Lease” shall mean the Ground Lease Agreement (Double Track Project), dated as of \_\_\_\_\_ 1, 20\_\_, between NICTD, as lessor, and RDA, as lessee.

"IFA" shall mean the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State, pursuant to Indiana Code 5-1.2, as supplemented and amended.

"IFA Appropriations Revenue Account" shall mean the account of such name held under Section 5(a)(i) of the Revenue Trust Fund Agreement.

"Initial Term" shall mean the period of time commencing on the date hereof and ending on June 30, 2021.

"Lease Premises" shall mean the property described in Exhibit B hereto from time to time as Supplemental Agreements specify the portion of the Rail Project financed with Related IFA Bonds as provided in Section 3.06 hereof, including without limitation, all Rail Project Property related thereto and any Additional Lease Premises included in the Lease Premises by reason of Section 3.05 hereof.

"Memorandum" shall mean the Memorandum of Lease attached hereto as Exhibit C to be recorded contemporaneously with the execution of this Agreement with respect to identifying the Lease Premises.

"NICTD" shall mean the Northern Indiana Commuter Transportation District established under Indiana Code 8-5-15.

“Operating Lease” shall mean the Operating Lease Agreement (Double Track Project), dated as of \_\_\_\_\_ 1, 20\_\_, between RDA, as lessor, and NICTD, as lessee.

"Projected Commencement Date" for any Additional Project shall mean the projected Commencement Date for such Additional Project, as set forth in the Supplemental Agreement covering such Additional Project.

"Rail Project" shall mean the Double Track Project described in Exhibit A to the Underlying Lease.

"Rail Project Property" shall mean all real and personal property interests, including, but not limited to, the Lease Premises, each Additional Project and such easements, licenses, leases, or property rights, in whatever form reasonably necessary to construct and operate the Rail Project, but not including NICTD rolling stock, except to the extent any costs for rolling stock are included in the applicable Cost Budget (as defined in the Governance Agreement), as the Rail Project is identified and described in Exhibit A to the Underlying Lease.

"RDA" shall mean the Northwest Indiana Regional Development Authority, organized and existing under Indiana Code 36-7.5.

"Related IFA Bonds" shall mean the bonds issued by IFA to finance the Rail Project, including any Additional Project, which are secured by the rental payments due under this Agreement. The initial series of Related IFA Bonds are the Indiana Finance Authority Lease State Appropriation Bonds (Double Tracking Project), Series 20\_\_ \_\_.

"Revenue Trust Fund Agreement" shall mean the Revenue Trust Fund Agreement, dated as of \_\_\_\_\_ 1, 20\_\_, entered into by and among RDA, IFA, NICTD, the Bond Trustee, and the Deposit Trustee.

"State" shall mean the State of Indiana.

"Supplemental Agreement" shall mean any agreement supplemental or amendatory of this Agreement entered into in accordance with Article IV, including each Supplemental Agreement that describes an Additional Project to be included in the Lease Premises hereunder as provided in Section 3.06 hereof.

"Supplemental Memorandum of Lease" shall mean each Supplemental Memorandum of Lease recorded in connection with the addition of Additional Lease Premises in the manner provided in Section 3.05 hereof.

"Underlying Lease" shall mean the Underlying Lease Agreement (Double Track Project), dated as of \_\_\_\_\_ 1, 20\_\_ between RDA and IFA as from time to time amended or supplemented in accordance with its terms.

Section 1.02. Interpretations. Unless the context indicates otherwise, words importing the singular number shall include the plural number and words importing the plural number shall include the singular number. The terms "hereof," "herein," "hereby," "hereto," "hereunder" and similar terms mean this Agreement.

Section 1.03. Not Indebtedness of State. It is expressly understood and agreed by the parties hereto that this Agreement does not constitute an indebtedness of the State within the

meaning or application of any constitutional provision or limitation, or a pledge of the faith or credit of the State.

Section 1.04. Not Indebtedness of RDA. It is expressly understood and agreed by the parties hereto that this Agreement does not constitute an indebtedness of RDA within the meaning or application of any constitutional provision or limitation, or a pledge of the faith or credit of RDA from the appropriations received. The obligations of RDA are limited solely to the funds from the appropriations.

## ARTICLE II

### CONSTRUCTION OF THE RAIL PROJECT

Section 2.01. Construction of the Rail Project. IFA and RDA represent that the Rail Project has been or will be constructed in accordance with the Governance Agreement, any Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable plans and specifications therefor.

## ARTICLE III

### LEASE AND MAINTENANCE OF LEASE PREMISES

Section 3.01. Lease of Lease Premises. In consideration of the rents, covenants and agreements contained herein, IFA does hereby demise and lease to RDA, and RDA does hereby rent and lease from IFA, the Lease Premises from and after the Effective Date for such Lease Premises. IFA and RDA shall file and record a Supplemental Memorandum of Lease covering any Additional Lease Premises as provided in Section 3.05 and any Supplemental Agreement adding any Additional Project as provided in Section 3.06 hereof.

Section 3.02. Term of Lease.

(a) The initial term of this Agreement shall be the Initial Term. This Agreement shall terminate upon the occurrence of the first of the following events:

(i) on June 30, 2021, or if this Agreement shall have been extended by IFA and RDA in accordance with this Section 3.02, on the last day of any Biennium in which notice of nonextension is given in accordance with this Section 3.02; or

(ii) on the latter of the first day for which funds have not been appropriated or the first day on which funds are not available to RDA or IFA to pay when due any amount payable by RDA under this Agreement or by IFA under the Act; or

(iii) Upon receipt of notice from IFA to RDA that all Related IFA Bonds have been paid in full and all other obligations and lease rentals due to IFA hereunder or under the Governance Agreement with respect to the Rail Project have been paid in full; or

- (iv) the termination of this Agreement by IFA pursuant to Section 6.02;
- or
- (v) the termination of the Underlying Lease.

(b) During the Initial Term, IFA and RDA shall have the right to extend the term of this Agreement from Biennium to Biennium, with the extensions not to exceed a lease term of 40 years from the Effective Date. IFA and RDA shall be deemed to have exercised such right to extend the term of this Agreement and this Agreement shall be extended for each successive Biennium, unless either IFA or RDA delivers written notice of nonextension to the other party hereto not less than six months prior to the last day of any Biennium, in which event this Agreement shall terminate on the last day of such Biennium.

Section 3.03. Operation and Maintenance. RDA shall cause NICTD at all times, in accordance with its then current practices, to operate and maintain the Lease Premises during the Initial Term of this Agreement and during any extensions thereof in an efficient and economical manner, as required by the Governance Agreement, and in accordance with its then current practices, to maintain the Lease Premises in good repair and sound operating condition and to make all necessary repairs, renewals, replacements and improvements thereto, all at the expense of NICTD, except that IFA shall maintain insurance on the Lease Premises in accordance with Section 7.04 at its expense. RDA shall cause NICTD to comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to NICTD and the Lease Premises. RDA shall cause NICTD to adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the operation thereof, and shall enforce such rules and regulations. RDA and IFA shall cause NICTD to comply with the foregoing requirements through the operation of the covenants and agreements of NICTD contained in the Governance Agreement, at which time RDA shall also cause NICTD to comply with the foregoing requirements through the operation of the covenants and agreements of NICTD contained in the Ground Lease and the Operating Lease.

Section 3.04. Alterations or Modifications of the Lease Premises. RDA shall not, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, make or cause to be made or permit NICTD to make or cause to be made, any alteration, modification, addition or improvement to all or any portion of the Lease Premises, which alteration, modification, addition or improvement materially impairs the value of the Lease Premises, unless such alteration, modification, addition or improvement is, in the opinion of NICTD, as permitted by the Governance Agreement or as is necessary or advisable for the safety of the public.

Section 3.05. Additional Lease Premises. In the event Additional Lease Premises are added to the property leased by RDA to IFA pursuant to the Underlying Lease, such Additional Lease Premises shall immediately without further action become part of the Lease Premises subject to this Agreement upon the recordation of a Supplemental Memorandum of Lease

executed by IFA and RDA in the offices of the Recorder of Lake County, Indiana, the Recorder of Porter County, Indiana, and the Recorder of LaPorte County, Indiana.

Section 3.06. Additional Project. IFA and RDA contemplate that the Rail Project may be funded in part by the issuance of an additional series of Related IFA Bonds from time to time to finance an Additional Project that constitutes a part of the Rail Project. In that event, IFA and RDA shall execute and deliver a Supplemental Agreement at such time to describe the Additional Project, provide for the Construction of such Additional Project and specify the rent due from RDA for such Additional Project.

## ARTICLE IV

### RENTS

Section 4.01. Timing for Payment. Subject to Sections 4.03 and 4.04 hereof, after the Funded Interest Date, RDA shall pay, in arrears, solely from the Funding Source, without relief from valuation or appraisal laws and without a defense of set-off, counterclaim or recoupment, a monthly rental for the Lease Premises or any portions thereof available for use, in an amount equal, in accordance with Indiana Code 5-1.3-5-2(a)(4), to the aggregate monthly rental payments set forth in the Supplemental Agreements, to IFA by general transfer of funds from an account of RDA or from the IFA Appropriations Revenue Account to such account as IFA may from time to time specify, so as to assure immediately available funds in such account on or before the first day of each month succeeding those months during which the Lease Premises or such portions thereof were actually used or available for use by RDA pursuant to this Agreement (provided that if the first day of any such month is not a business day then on or before the immediately preceding business day).

Section 4.02. Supplemental Agreements. IFA and RDA may, on the date hereof and from time to time thereafter, enter into one or more Supplemental Agreements, substantially in the form of Exhibit A, which may (a) set forth the Available Portion as of the date of such Supplemental Agreement, (b) add Additional Lease Premises to this Agreement when added under the terms of the Underlying Lease or to finance an Additional Project, (c) remove a portion of the Lease Premises being replaced, (d) state the rent payable for the Lease Premises, (e) provide that all lease covenants, including the obligation to pay rent, shall be unitary, whether covered by this Agreement or a Supplemental Agreement, or (f) contain such other covenants and agreements as the parties thereto agree upon.

Section 4.03. Appropriations. The lease rentals payable hereunder during the Initial Term or during any extension of this Agreement are payable by RDA solely from Biennial appropriations from the General Assembly of the State to RDA for such period. RDA and IFA have both determined that the rents due under this Agreement are fair and reasonable for the Lease Premises included herein. RDA can pay lease rentals solely from available revenues from the fund established under Indiana Code 36-7.5-4.

Section 4.04. Abatement of Rent.

(a) The lease rentals payable hereunder during the Initial Term or during any extension of this Agreement are payable by RDA solely for the actual use or availability for use of the Lease Premises or portions thereof provided by IFA.

(b) After the Commencement Date for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed, so as to render such portion unavailable for use by RDA, or shall for any other reason become unavailable for use by RDA: (i) any rental payments due for such unavailable portion of the Lease Premises shall be abated during such unavailability by an amount equal to the product of the portion of (A) the rental payments otherwise due on such portion of the Lease Premises, times (B) a fraction of such rental payments, the numerator of which fraction equals the then estimated expenses incurred or to be incurred by IFA and allocable to such portion and the denominator of which fraction equals the then estimated expenses incurred or to be incurred by IFA and allocable to the Lease Premises; or (ii) IFA may add Additional Lease Premises to this Agreement pursuant to a Supplemental Agreement so that there is no interruption in the lease rentals payable by RDA as described in clause (i) above.

ARTICLE V

SUBLETTING

Section 5.01. Subletting. Except for the Operating Lease, none of the Lease Premises nor any portions thereof shall be sublet by RDA to, and none of the Lease Premises nor any portions thereof shall be used by, any person (natural or otherwise), unless an Authorized Officer of IFA gives prior written consent. No such subletting shall relieve RDA from its obligations to pay any rental payment payable under this Agreement and to keep and perform all other covenants on its part to be kept and performed under this Agreement. In the event this Agreement is terminated pursuant to Section 3.02 or Section 6.02 following an event of default by RDA, other than by reason of IFA terminating this Agreement pursuant to Section 6.02 as a result of not having received a rental payment from the Funding Source under Section 6.01(a), the Operating Lease shall remain in force and effect for the benefit of IFA (who upon termination of this Agreement shall succeed to the rights, title and interest of RDA, as lessor under the Operating Lease) and NICTD.

ARTICLE VI

DEFAULT

Section 6.01. Default. An "event of default" shall mean, whenever that term is used in this Agreement, any one or more of the following events:

(a) failure by RDA to pay or cause to be paid any amount payable by RDA under this Agreement, including any Supplemental Agreement, when due; or

(b) the failure by RDA to observe or perform any covenant, condition or agreement on its part to be observed or performed under Section 7.02; or

(c) failure by RDA to observe or perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a) or (b) of this Section 6.01, which failure continues for a period of thirty days after written notice, specifying such failure and requesting that it be remedied, is given to RDA by an Authorized Officer of IFA.

Section 6.02. Remedies. Whenever any event of default shall have happened and be subsisting and provided that the event of default has not been cured, IFA may terminate this Agreement by written notice to RDA and/or take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of RDA under this Agreement.

Section 6.03. Remedies Cumulative. No remedy in this Agreement conferred upon or reserved to IFA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle IFA to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Agreement.

Section 6.04. Limited Waiver. In the event any agreement contained in this Agreement shall be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

## ARTICLE VII

### COVENANTS

Section 7.01. Power to Agree. IFA and RDA each covenant to the other that the execution and delivery of this Agreement has been duly authorized by all necessary corporate action, and that this Agreement has been duly executed and delivered, and constitutes a legal, valid and binding agreement in accordance with its terms and provisions.

Section 7.02. Appropriations. RDA covenants that it will do all things lawfully within its power to obtain and maintain funds from which to meet its rental payment and operation and maintenance obligations under this Agreement, including, but not limited to, requesting an appropriation in an amount sufficient to meet its rental payment and operation and maintenance obligations under this Agreement in writing at a time sufficiently in advance of the date for payment thereof so that an appropriation may be made in the normal State budgetary process, using its *bona fide* best efforts to have such request approved, and exhausting all available

reviews and appeals in the event such request is not approved. RDA will pay rent at times and in amounts sufficient to pay in full the debt service payment under the terms of any Related IFA Bonds outstanding with respect to the Rail Project, including any additions to reserves for the Related IFA Bonds maintained by IFA and additional rent as provided by this Agreement.

Section 7.03. Use of Lease Premises. Notwithstanding any other provision of this Agreement to the contrary, RDA covenants that it: (a) will lease the Lease Premises to NICTD for use as a rail project as defined in Indiana Code 5-1.3-2-14, (b) will not use and will cause NICTD to agree not to use the Lease Premises or any portion thereof for any private business use within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended from time to time, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, and (c) will comply with Section 148(f) of the Internal Revenue Code of 1986, as amended from time to time. Any agreement entered into by RDA in violation of this Section 7.03 shall be of no force or effect and shall not convey any rights or impose any obligation in respect to it, at law or in equity.

Section 7.04. Maintenance of Insurance and Performance Bonds. IFA shall keep or cause NICTD to keep the Lease Premises insured against loss or damage from causes customarily insured against under a standard extended coverage endorsement in an amount at least equal to one hundred percent of the full replacement cost of the Lease Premises or such lesser amount as IFA and RDA may agree upon, if, in the opinion of an Authorized Officer of IFA, such insurance is reasonably commercially available; provided, however, such insurance coverage may contain a reasonable loss deductible clause. IFA shall at all times use its best efforts to maintain or cause to be maintained insurance or reserves against loss or damage from such hazards and risks to the person and property of others as are usually insured or reserved against by those operating properties similar to the Lease Premises. IFA shall maintain or cause to be maintained or cause NICTD to maintain or cause to be maintained such performance bonds or performance insurance with respect to contracts it may enter into for Construction of the Lease Premises as are usually maintained by those constructing properties similar to the Lease Premises.

Section 7.05. Completion of Performance; Reconstruction; Application of Proceeds. If performance of any contract for Construction of the Lease Premises is not completed in accordance with its terms and, in the opinion of a registered engineer selected by NICTD and acceptable to IFA and RDA, the cost of completion of such performance shall not exceed the amount of proceeds from any performance bond or performance insurance to be received by reason of such noncompletion of performance and other amounts available therefor, IFA or RDA, as applicable, shall, as expeditiously as possible, continuously and diligently complete or cause to be completed or cause NICTD to complete or cause to be completed such performance. If all or any portion of the Lease Premises shall be damaged or destroyed and in the opinion of a registered engineer selected by NICTD and acceptable to IFA and RDA (a) the cost of such repair, replacement or reconstruction shall not exceed the amount of any insurance proceeds to be received by reason of such damage or destruction and other amounts available therefor, and (b) such repair, replacement or reconstruction can be completed within the period covered by any rent loss insurance maintained or caused to be maintained by IFA on the Lease Premises or other amounts available therefor, IFA shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted, the repair, reconstruction or replacement thereof; provided,

however, IFA may substitute an Additional Project in lieu of reconstruction to the extent permitted by Section 4.04(b) hereof. In the event IFA does not substitute an Additional Project pursuant to Section 4.04(b) hereof, within one hundred twenty days after the noncompletion of performance of any contract for Construction or the occurrence of an event of damage or destruction to the Lease Premises, IFA, through any Authorized Officer of IFA, shall deliver to RDA and the Trustee the written opinion of the engineer referred to in this Section 7.05 stating whether or not the conditions set forth above with respect thereto are satisfied. The proceeds of any performance bond or performance insurance paid on account of such noncompletion of performance and from any insurance paid on account of such damage or destruction (other than any rent loss insurance) shall be made available for, and to the extent necessary shall be applied to, the cost of such repair, reconstruction or replacement. Such proceeds not applied within thirty-six months after receipt thereof by IFA to such completion of performance or such repair, reconstruction or replacement shall be applied to any lawful purpose of IFA.

Section 7.06. Indemnification. RDA agrees to cause NICTD, to the extent provided in the Ground Lease or the Operating Lease, to release, protect, defend, indemnify and hold harmless RDA, IFA, the Bond Trustee, the Deposit Trustee, and their respective agents, employees, representatives and consultants, from and against any and all claims, causes of action, suits, judgments, demands, and/or losses (including attorney fees), in each case if asserted or incurred by or awarded to any third party, arising out of or relating to or resulting from (a) NICTD's design, construction or operation of the Rail Project, (b) any act, omission, negligence, or willful misconduct of NICTD, any of its Ancillary Users (as defined in the Operating Lease) or anyone acting under its control or for whom it is legally responsible, (c) failure of NICTD, or anyone acting under its control or for whom it is legally responsible, to perform or observe any requirement or obligation imposed by this Agreement and (d) arising out of any other act or occurrence within the Rail Project. NICTD's indemnity obligation shall not extend to: (i) any third party claim to the extent directly caused by the sole negligence, recklessness, willful misconduct, or breach of any material obligation under this Agreement or the Governance Agreement by IFA or RDA; or (ii) any claims, causes of action, suits, judgments, demands, and/or losses resulting from any action of RDA or IFA during an Operations Step-In Period (as defined in the Governance Agreement) or resulting from any actions taken by RDA or IFA after the exercise of any Construction Period Step-In Rights (as defined in the Governance Agreement), provided however that nothing herein shall relieve NICTD of responsibility to pay up to the Maximum NICTD Excess Cost Contribution for Excess Construction Costs (as both such terms are defined in the Governance Agreement) irrespective of the exercise of Construction Period Step-In Rights. RDA and IFA shall have no obligation to indemnify NICTD.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Effectiveness. This Agreement shall be effective from and after the Effective Date, through the date on which this Agreement, or any extensions hereof, shall terminate in accordance with Section 3.02.

Section 8.02. Notices. All notices required or authorized to be given pursuant to this Agreement shall be in writing and shall be served personally or sent by certified mail to the main office of the party or parties to be notified, and the effective date thereof shall be the date of delivery, if served personally, or the date it is deposited in the mail, if mailed.

Section 8.03. Incorporation by Reference. All the covenants, agreements, terms and conditions required under the laws of the State, including the Act, to be included in any lease entered into under Indiana Code 5-1.3-5-2(a) are incorporated herein by this reference.

Section 8.04. Severability. In case any section or provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, that illegality, invalidity or inoperability shall not affect the remainder hereof or any other section or provision of this Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, which shall be construed and enforced as if that illegal, invalid or inoperable portion were not contained herein. Any such illegality, invalidity or inoperability of any application shall not affect any legal, valid, and operable application, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 8.05. Table of Contents; Captions. The Table of Contents included within this Agreement and the captions included throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 8.06. Governing Law. This Agreement shall be construed according to, and subject to, the laws of the State.

Section 8.07. Successors and Assigns. The rights and obligations of either party under this Agreement shall not be assignable by such party without the prior written consent of the other party, except that IFA may assign any of its rights under this Agreement to the Trustee. This Agreement shall inure to the benefit and shall be binding upon the respective successors and permitted assigns of the parties. Nothing herein expressed or implied is intended to confer upon any person, other than the parties or their respective successors or permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

INDIANA FINANCE AUTHORITY

By: \_\_\_\_\_  
Cristopher R. Johnston, Chair

Attest:

\_\_\_\_\_  
Dan Huges, Public Finance Director  
of the State of Indiana

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form and substance.

STATE BUDGET AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_, State Budget Director

Approved as to form and legality:

ATTORNEY GENERAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A

FORM OF  
SUPPLEMENT TO  
STATE APPROPRIATION MASTER LEASE AGREEMENT (DOUBLE TRACK PROJECT)

This SUPPLEMENT TO STATE APPROPRIATION MASTER LEASE AGREEMENT (DOUBLE TRACK PROJECT) made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (this "Supplemental Agreement"), by and between the INDIANA FINANCE AUTHORITY, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State of Indiana (the "IFA"), pursuant to Indiana Code, 5-1.2, and the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, duly created and existing under by virtue of Indiana Code 36-7.5 (the "RDA");

WITNESSETH:

WHEREAS, the parties entered into a State Appropriation Master Lease Agreement (Double Track Project) as of the first day of \_\_\_\_\_, 20\_\_ (the "Agreement"); and

WHEREAS, the Agreement provides that IFA and RDA may, on the date of the Agreement and from time to time thereafter, enter into one or more Supplemental Agreements, each of which may (1) set forth the Available Portion as of the date of such Supplemental Agreement, (2) add Additional Lease Premises to the Agreement when added under the terms of the Underlying Lease or to finance an Additional Project, (3) provide for the Construction of an Additional Project in the event such Additional Project shall be financed by an additional series of IFA Related Bonds, (4) add Additional Lease Premises so that there is no interruption in the lease rentals payable by RDA as described in Section 4.04(b) of the Agreement, (5) remove a portion of the Lease Premises being replaced, (6) state the rent payable for the Lease Premises, (7) provide that all lease covenants, including the obligation to pay rent, shall be unitary, whether covered by the Agreement or a Supplemental Agreement, or (8) contain such other covenants and agreements as the parties thereto agree upon; and

WHEREAS, the parties desire, by this Supplemental Agreement, to enter into such a Supplemental Agreement covering the [Available Portion] [Additional Project] [Additional Lease Premises], described in Schedule 1 attached herto, the total expenses incurred or to be incurred by IFA and allocable to which are currently estimated to be \$\_\_\_\_\_ and the Commencement Date for which is currently projected to be \_\_\_\_\_ (the "Projected Commencement Date");

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein set forth, the parties agree as follows:

Section 1. Agreement to Remain in Effect. Subject to the amendments, modifications and agreements contained in this Supplemental Agreement, all the terms and

provisions of the Agreement shall remain in full force and effect, and are hereby incorporated herein by this reference. All capitalized terms used herein and not defined herein shall have the respective meanings set forth in the Agreement.

Section 2. Description of the [Available Portion] [Additional Project] [Additional Lease Premises]. The [Available Portion] [Additional Project] [Additional Lease Premises] covered by this Supplemental Agreement is described in Schedule 1 attached hereto. [IFA and RDA represent that the Additional Project has been or will be constructed in accordance with the Governance Agreement, any Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable plans and specifications therefor. The Funded Interest Date for the Additional Project is \_\_\_\_\_.]

Section 3. Rental Payments. Commencing on the Commencement Date for the [Available Portion] [Additional Project] [Additional Lease Premises] through \_\_\_\_\_, \_\_\_\_\_, RDA shall pay on a monthly basis, in arrears, the rental payments set forth in the Addendum attached hereto in accordance with Article IV of the Agreement.

Section 4. Amendments. IFA and RDA shall, on the Commencement Date for the [Available Portion] [Additional Project] [Additional Lease Premises] and from time to time thereafter, enter into one or more amendments to this Supplemental Agreement, each of which amendments shall include an addendum superseding the Addendum to: (a) adjust the rental payments under this Supplemental Agreement to reflect the then estimated expenses incurred or to be incurred by IFA in accordance with Indiana Code 5-1.3-5-2(a)(4); and (b) make such other changes as the parties may agree upon.

Section 5. Covenants Unitary. All covenants under the Agreement, this Supplemental Agreement or any other Supplemental Agreement, including the obligation to pay rent, shall be unitary and include all Lease Premises, whether covered by the Agreement, this Supplemental Agreement or any other Supplemental Agreement.

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

INDIANA FINANCE AUTHORITY

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Public Finance Director  
of the State of Indiana

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form and substance:

STATE BUDGET AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_, State Budget Director

Approved as to form and legality:

ATTORNEY GENERAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ADDENDUM

MONTHLY RENTAL PAYMENT SCHEDULE

<u>Month Available For Use</u>	<u>Month Payments Due</u>	<u>Rental Payments</u>
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SCHEDULE 1

[AVAILABLE PORTION] [ADDITIONAL PROJECT] [ADDITIONAL LEASE PREMISES]

EXHIBIT B  
LEASE PREMISES

EXHIBIT C  
FORM OF MEMORANDUM

**RDA MEMBER DUES MASTER LEASE AGREEMENT  
(DOUBLE TRACK PROJECT)**

**by and between**

**INDIANA FINANCE AUTHORITY  
as Lessor**

**and**

**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY  
as Lessee**

**Dated as of \_\_\_\_\_ 1, 20\_\_**

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EXHIBIT A FORM OF SUPPLEMENT TO RDA MEMBER DUES MASTER LEASE AGREEMENT (DOUBLE TRACK PROJECT)

EXHIBIT B LEASE PREMISES

EXHIBIT C FORM OF MEMORANDUM

**RDA MEMBER DUES MASTER LEASE AGREEMENT  
(DOUBLE TRACK PROJECT)**

This RDA MEMBER DUES MASTER LEASE AGREEMENT (DOUBLE TRACK PROJECT) made and entered into as of the first day of \_\_\_\_\_, 20\_\_ (this "Agreement"), by and between the INDIANA FINANCE AUTHORITY, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State of Indiana (the "IFA"), pursuant to Indiana Code 5-1.2, and the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, duly created and existing under and by virtue of Indiana Code 36-7.5 (the "RDA");

WITNESSETH:

WHEREAS, this Agreement is designed to provide a master leasing structure with respect to various portions of the Rail Project defined herein that relate to bonds issued by IFA for the Rail Project and are payable from the Funding Source set forth herein (the "Related IFA Bonds"); and

WHEREAS, as series of Related IFA Bonds are authorized to provide additional funding for the Rail Project, IFA and RDA shall describe the Additional Project to be funded from that specific series of Related IFA Bonds and the lease rentals payable by RDA with respect thereto in a Supplemental Agreement;

In consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND GENERAL PROVISIONS

Section 1.01. Definitions. The following words and terms as used in this Agreement or in any Supplemental Agreement or other amendment or supplement hereto shall have the following meanings unless provided for in this Agreement or in any Supplemental Agreement or other amendment or supplement hereto, unless the context or use clearly indicates another or different meaning or intent:

"Act" shall mean Indiana Code 5-1.3, as amended or supplemented, or any successor thereto.

"Additional Lease Premises" shall mean any additional real property that is acquired for the Rail Project or an Additional Project with the proceeds of any series of Related IFA Bonds or incorporated therein in connection with any series of Related IFA Bonds, which is added to this Agreement pursuant to the terms set forth in Section 3.05.

"Additional Project" shall mean an additional portion of the Rail Project that becomes part of the Lease Premises in the manner provided in Section 3.06.

"Agreement" shall mean this RDA Member Dues Master Lease Agreement (Double Track Project) as from time to time amended or supplemented by any Supplemental Agreement or other amendment or supplement hereto, including a Supplemental Memorandum of Lease.

"Authorized Officer of IFA" shall mean the Chair of IFA or the Public Finance Director of the State of Indiana and, with reference to any act or document, also means any other person authorized by a resolution of IFA to perform such act or to sign such document.

"Authorized Officer of RDA" shall mean the Chair or the Chief Executive Officer of RDA and, with reference to any act or document, also means any other person authorized by a resolution of RDA to perform such act or to sign such document.

"Available Portion" shall mean, collectively, the portions of the Lease Premises that are available for use.

"Bond Trustee" shall mean the trustee bank serving as Trustee for the Related IFA Bonds.

"Commencement Date" for any Lease Premises or any portion thereof shall mean the date on which a Completion Certificate for such Lease Premises or such portion thereof is accepted by an Authorized Officer of RDA.

"Completion Certificate" for any Lease Premises or any portion thereof shall mean a certificate (a) executed by an Authorized Officer of IFA certifying that such Lease Premises or such portion thereof is available for use by RDA and (b) accepted by an Authorized Officer of RDA acknowledging that such Lease Premises or such portion thereof is available for use by RDA.

"Construction" shall mean constructing, acquiring, renovating, rehabilitating, reconstructing, improving, extending or equipping the Rail Project or the Lease Premises or any portion thereof.

"Deposit Trustee" shall mean the trustee bank acting as the Deposit Trustee under the Revenue Trust Fund Agreement.

"Development Agreement" shall mean any development agreement entered into by NICTD, RDA and IFA for the purpose of governing the completion of the Rail Project in a manner consistent with and as contemplated by the Governance Agreement.

"Effective Date" shall mean the date of execution and delivery of this Agreement, which is \_\_\_\_\_, 20\_\_.

"Fiscal Year" shall mean the twelve-month period commencing on July 1 of each year and ending on the succeeding June 30, or such other fiscal year of the State as may be mandated by law.

“Funded Interest Date” shall mean the date until which the proceeds of a series of Related IFA Bonds are expected to pay the interest thereon. There is no Funded Interest Date for that portion of the Rail Project being financed with the initial series of the Related IFA Bonds.

"Funding Source" shall mean the portion of the annual payments to RDA from the Cities of Gary, East Chicago and Hammond and the Counties of Lake and Porter due under Indiana Code 6-3.6-6-9, Indiana Code 36-7.5-4-2 and Indiana Code 6-3.6-11-6, which RDA has pledged to the payment of the lease rentals due under this Agreement, as provided herein or in a Supplemental Agreement, prior to the payment of the lease rentals due under the RDA Available Revenue Master Lease Agreement (West Lake Project), dated as of \_\_\_\_\_ 1, 20\_\_, between IFA, as lessor, and RDA, as lessee.

"Governance Agreement" shall mean the Governance Agreement effective as of August 31, 2018, by and among NICTD, RDA and IFA, as from time to time amended or supplemented in accordance with its terms.

“Ground Lease” shall mean the Ground Lease Agreement, dated as of \_\_\_\_\_ 1, 20\_\_, between NICTD, as lessor, and RDA, as lessee.

"IFA" shall mean the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State, pursuant to Indiana Code 5-1.2, as supplemented and amended.

"IFA RDA Member Dues Account" shall mean the account of such name held under Section 5(a)(iii) of the Revenue Trust Fund Agreement.

"Lease Premises" shall mean the property described in Exhibit B hereto from time to time as Supplemental Agreements specify the portion of the Rail Project financed with Related IFA Bonds as provided in Section 3.06 hereof, including without limitation, all Rail Project Property related thereto and any Additional Lease Premises included in the Lease Premises by reason of Section 3.05 hereof.

"Memorandum" shall mean the Memorandum of Lease attached hereto as Exhibit C to be recorded contemporaneously with the execution of this Agreement with respect to identifying the Lease Premises.

"NICTD" shall mean the Northern Indiana Commuter Transportation District established under Indiana Code 8-5-15.

“Operating Lease” shall mean the Operating Lease Agreement, dated as of \_\_\_\_\_ 1, 20\_\_, between RDA, as lessor, and NICTD, as lessee.

"Projected Commencement Date" for any Additional Project shall mean the projected Commencement Date for such Additional Project, as set forth in the Supplemental Agreement covering such Additional Project.

"Rail Project" shall mean the Double Track Project described in Exhibit A to the Underlying Lease.

"Rail Project Property" shall mean all real and personal property interests, including, but not limited to, the Lease Premises, each Additional Project and such easements, licenses, leases, or property rights, in whatever form reasonably necessary to construct and operate the Rail Project, but not including NICTD rolling stock, except to the extent any costs for rolling stock are included in the applicable Cost Budget (as defined in the Governance Agreement), as the Rail Project is identified and described in Exhibit A to the Underlying Lease.

"RDA" shall mean the Northwest Indiana Regional Development Authority, organized and existing under Indiana Code 36-7.5.

"Related IFA Bonds" shall mean the bonds issued by IFA to finance the Rail Project, including any Additional Project, which are secured by the rental payments due under this Agreement. The initial series of Related IFA Bonds are the Indiana Finance Authority Lease RDA Member Dues Bonds (Double Track Project), Series 20\_\_ \_.

"Revenue Trust Fund Agreement" shall mean the Revenue Trust Fund Agreement, dated as of \_\_\_\_\_ 1, 20\_\_, entered into by and among RDA, IFA, NICTD, the Bond Trustee, and the Deposit Trustee.

"State" shall mean the State of Indiana.

"Supplemental Agreement" shall mean any agreement supplemental or amendatory of this Agreement entered into in accordance with Article IV, including each Supplemental Agreement that describes an Additional Project to be included in the Lease Premises hereunder as provided in Section 3.06 hereof.

"Supplemental Memorandum of Lease" shall mean each Supplemental Memorandum of Lease recorded in connection with the addition of Additional Lease Premises in the manner provided in Section 3.05 hereof.

"Term" shall mean the period of time commencing on the date hereof and ending on \_\_\_\_\_.

"Underlying Lease" shall mean the Underlying Lease Agreement dated as of \_\_\_\_\_ 1, 20\_\_ between RDA and IFA as from time to time amended or supplemented in accordance with its terms.

Section 1.02. Interpretations. Unless the context indicates otherwise, words importing the singular number shall include the plural number and words importing the plural number shall include the singular number. The terms "hereof," "herein," "hereby," "hereto," "hereunder" and similar terms mean this Agreement.

Section 1.03. Not Indebtedness of State. It is expressly understood and agreed by the parties hereto that this Agreement does not constitute an indebtedness of the State within the

meaning or application of any constitutional provision or limitation, or a pledge of the faith or credit of the State.

Section 1.04. Not Indebtedness of RDA. It is expressly understood and agreed by the parties hereto that this Agreement does not constitute an indebtedness of RDA within the meaning or application of any constitutional provision or limitation, or a pledge of the faith or credit of RDA.

## ARTICLE II

### CONSTRUCTION OF THE RAIL PROJECT

Section 2.01. Construction of the Rail Project. IFA and RDA represent that the Rail Project has been or will be constructed in accordance with the Governance Agreement, any Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable plans and specifications therefor.

## ARTICLE III

### LEASE AND MAINTENANCE OF LEASE PREMISES

Section 3.01. Lease of Lease Premises. In consideration of the rents, covenants and agreements contained herein, IFA does hereby demise and lease to RDA, and RDA does hereby rent and lease from IFA, the Lease Premises from and after the Effective Date for such Lease Premises. IFA and RDA shall file and record a Supplemental Memorandum of Lease covering any Additional Lease Premises as provided in Section 3.05 and any Supplemental Agreement adding any Additional Project as provided in Section 3.06 hereof.

Section 3.02. Term of Lease. The Term shall end on \_\_\_\_\_; provided the Term shall end earlier or later than such date, upon the occurrence of the first of the following events, in which case, this Agreement shall terminate upon the date of occurrence of such event:

- (a) Upon receipt of notice from IFA to RDA that all Related IFA Bonds have been paid in full and all other obligations and lease rentals due to IFA hereunder or under the Governance Agreement with respect to the Rail Project have been paid in full;
- (b) the termination of this Agreement by IFA pursuant to Section 6.02; or
- (c) the termination of the Underlying Lease.

Section 3.03. Operation and Maintenance. RDA shall cause NICTD at all times, in accordance with its then current practices, to operate and maintain the Lease Premises during the Term of this Agreement in an efficient and economical manner, as required by the Governance Agreement, and in accordance with its then current practices, to maintain the Lease Premises in good repair and sound operating condition and to make all necessary repairs, renewals, replacements and improvements thereto, all at the expense of NICTD, except that IFA shall maintain insurance on the Lease Premises in accordance with Section 7.04 at its expense. RDA shall cause NICTD to comply with all valid statutes, rules, regulations, orders and directions of

any legislative, administrative or judicial body applicable to NICTD and the Lease Premises. RDA shall cause NICTD to adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the operation thereof, and shall enforce such rules and regulations. RDA and IFA shall cause NICTD to comply with the foregoing requirements through the operation of the covenants and agreements of NICTD contained in the Governance Agreement, at which time RDA shall also cause NICTD to comply with the foregoing requirements through the operation of the covenants and agreements of NICTD contained in the Ground Lease and the Operating Lease.

Section 3.04. Alterations or Modifications of the Lease Premises. RDA shall not, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, make or cause to be made or permit NICTD to make or cause to be made, any alteration, modification, addition or improvement to all or any portion of the Lease Premises, which alteration, modification, addition or improvement materially impairs the value of the Lease Premises, unless such alteration, modification, addition or improvement is, in the opinion of NICTD, as permitted by the Governance Agreement or as is necessary or advisable for the safety of the public.

Section 3.05. Additional Lease Premises. In the event Additional Lease Premises are added to the property leased by RDA to IFA pursuant to the Underlying Lease, such Additional Lease Premises shall immediately without further action become part of the Lease Premises subject to this Agreement upon the recordation of a Supplemental Memorandum of Lease executed by IFA and RDA in the offices of the Recorder of Lake County, Indiana, the Recorder of Porter County, Indiana, and the Recorder of LaPorte County, Indiana.

Section 3.06. Additional Project. IFA and RDA contemplate that the Rail Project may be funded in part by the issuance of an additional series of Related IFA Bonds from time to time to finance an Additional Project that constitutes a part of the Rail Project. In that event, IFA and RDA shall execute and deliver a Supplemental Agreement at such time to describe the Additional Project, provide for the Construction of such Additional Project and specify the rent due from RDA for such Additional Project.

## ARTICLE IV

### RENTS

Section 4.01. Timing for Payment. Subject to Sections 4.03 and 4.04 hereof, RDA shall pay, in arrears, without relief from valuation or appraisal laws and without a defense of set-off, counterclaim or recoupment, a monthly rental for the Lease Premises or any portions thereof available for use, in an amount equal to the aggregate monthly rental payments set forth in the Supplemental Agreements, to IFA by general transfer of funds from an account of RDA or from the IFA RDA Member Dues Revenue Account to such account as IFA may from time to time specify, so as to assure immediately available funds in such account on or before the first day of each month succeeding those months during which the Lease Premises or such portions thereof were actually used or available for use by RDA pursuant to this Agreement (provided that if the first day of any such month is not a business day then on or before the immediately preceding business day).

Section 4.02. Supplemental Agreements. IFA and RDA may, on the date hereof and from time to time thereafter, enter into one or more Supplemental Agreements, substantially in the form of Exhibit A, which may (a) set forth the Available Portion as of the date of such Supplemental Agreement, (b) add Additional Lease Premises to this Agreement when added under the terms of the Underlying Lease or to finance an Additional Project, (c) remove a portion of the Lease Premises being replaced, (d) state the rent payable for the Lease Premises, (e) provide that all lease covenants, including the obligation to pay rent, shall be unitary, whether covered by this Agreement or a Supplemental Agreement, or (f) contain such other covenants and agreements as the parties thereto agree upon.

Section 4.03. Funding Source. The lease rentals payable hereunder are payable by RDA solely from the Funding Source. RDA and IFA have both determined that the rents due under this Agreement are fair and reasonable for the Lease Premises included herein. RDA can pay lease rentals solely from the Funding Source.

Section 4.04. Abatement of Rent.

(a) The lease rentals payable hereunder during the Term of this Agreement are payable by RDA solely for the actual use or availability for use of the Lease Premises or portions thereof provided by IFA.

(b) After the Commencement Date for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed, so as to render such portion unavailable for use by RDA, or shall for any other reason become unavailable for use by RDA: (i) any rental payments due for such unavailable portion of the Lease Premises shall be abated during such unavailability by an amount equal to the product of the portion of (A) the rental payments otherwise due on such portion of the Lease Premises, times (B) a fraction of such rental payments, the numerator of which fraction equals the then estimated expenses incurred or to be incurred by IFA and allocable to such portion and the denominator of which fraction equals the then estimated expenses incurred or to be incurred by IFA and allocable to the Lease Premises; or (ii) IFA may add Additional Lease Premises to this Agreement pursuant to a Supplemental Agreement so that there is no interruption in the lease rentals payable by RDA as described in clause (i) above.

ARTICLE V

SUBLETTING

Section 5.01. Subletting. Except for the Operating Lease, none of the Lease Premises nor any portions thereof shall be sublet by RDA to, and none of the Lease Premises nor any portions thereof shall be used by, any person (natural or otherwise), unless an Authorized Officer of IFA gives prior written consent. No such subletting shall relieve RDA from its obligations to pay any rental payment payable under this Agreement and to keep and perform all other covenants on its part to be kept and performed under this Agreement. In the event this Agreement is terminated pursuant to Section 3.02 or Section 6.02 following an event of default by RDA, the Operating Lease shall remain in force and effect for the benefit of IFA (who upon

termination of this Agreement shall succeed to the rights, title and interest of RDA, as lessor under the Operating Lease) and NICTD.

## ARTICLE VI

### DEFAULT

Section 6.01. Default. An "event of default" shall mean, whenever that term is used in this Agreement, any one or more of the following events:

- (a) failure by RDA to pay or cause to be paid any amount payable by RDA under this Agreement, including any Supplemental Agreement, when due; or
- (b) the failure by RDA to observe or perform any covenant, condition or agreement on its part to be observed or performed under Section 7.02; or
- (c) failure by RDA to observe or perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a) or (b) of this Section 6.01, which failure continues for a period of thirty days after written notice, specifying such failure and requesting that it be remedied, is given to RDA by an Authorized Officer of IFA.

Section 6.02. Remedies. Whenever any event of default shall have happened and be subsisting and provided that the event of default has not been cured, IFA may terminate this Agreement by written notice to RDA and/or take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of RDA under this Agreement.

Section 6.03. Remedies Cumulative. No remedy in this Agreement conferred upon or reserved to IFA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle IFA to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Agreement.

Section 6.04. Limited Waiver. In the event any agreement contained in this Agreement shall be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

## ARTICLE VII

### COVENANTS

Section 7.01. Power to Agree. IFA and RDA each covenant to the other that the execution and delivery of this Agreement has been duly authorized by all necessary corporate action, and that this Agreement has been duly executed and delivered, and constitutes a legal, valid and binding agreement in accordance with its terms and provisions.

Section 7.02. Funding Source. RDA covenants that it will do all things lawfully within its power to obtain and maintain funds from the Funding Source needed to meet its rental payment and operation and maintenance obligations under this Agreement. RDA will pay rent at times and in amounts sufficient to pay in full the debt service payment under the terms of any Related IFA Bonds outstanding with respect to the Rail Project, including any additions to reserves for the Related IFA Bonds maintained by IFA and additional rent as provided by this Agreement.

Section 7.03. Use of Lease Premises. Notwithstanding any other provision of this Agreement to the contrary, RDA covenants that it: (a) will lease the Lease Premises to NICTD for use as a rail project as defined in Indiana Code 5-1.3-2-14, (b) will not use and will cause NICTD to agree not to use the Lease Premises or any portion thereof for any private business use within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended from time to time, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, and (c) will comply with Section 148(f) of the Internal Revenue Code of 1986, as amended from time to time. Any agreement entered into by RDA in violation of this Section 7.03 shall be of no force or effect and shall not convey any rights or impose any obligation in respect to it, at law or in equity.

Section 7.04. Maintenance of Insurance and Performance Bonds. IFA shall keep or cause NICTD to keep the Lease Premises insured against loss or damage from causes customarily insured against under a standard extended coverage endorsement in an amount at least equal to one hundred percent of the full replacement cost of the Lease Premises or such lesser amount as IFA and RDA may agree upon, if, in the opinion of an Authorized Officer of IFA, such insurance is reasonably commercially available; provided, however, such insurance coverage may contain a reasonable loss deductible clause. IFA shall at all times use its best efforts to maintain or cause to be maintained insurance or reserves against loss or damage from such hazards and risks to the person and property of others as are usually insured or reserved against by those operating properties similar to the Lease Premises. IFA shall maintain or cause to be maintained or cause NICTD to maintain or cause to be maintained such performance bonds or performance insurance with respect to contracts it may enter into for Construction of the Lease Premises as are usually maintained by those constructing properties similar to the Lease Premises. RDA shall not be responsible for paying the cost of any insurance required to be kept or maintained or caused to be kept or maintained under this Section.

Section 7.05. Completion of Performance; Reconstruction; Application of Proceeds. If performance of any contract for Construction of the Lease Premises is not completed in accordance with its terms and, in the opinion of a registered engineer selected by NICTD and

acceptable to IFA and RDA, the cost of completion of such performance shall not exceed the amount of proceeds from any performance bond or performance insurance to be received by reason of such noncompletion of performance and other amounts available therefor, IFA or RDA, as applicable, shall, as expeditiously as possible, continuously and diligently complete or cause to be completed or cause NICTD to complete or cause to be completed such performance. If all or any portion of the Lease Premises shall be damaged or destroyed and in the opinion of a registered engineer selected by NICTD and acceptable to IFA and RDA (a) the cost of such repair, replacement or reconstruction shall not exceed the amount of any insurance proceeds to be received by reason of such damage or destruction and other amounts available therefor, and (b) such repair, replacement or reconstruction can be completed within the period covered by any rent loss insurance maintained or caused to be maintained by IFA on the Lease Premises or other amounts available therefor, IFA shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted, the repair, reconstruction or replacement thereof; provided, however, IFA may substitute an Additional Project in lieu of reconstruction to the extent permitted by Section 4.04(b) hereof. In the event IFA does not substitute an Additional Project pursuant to Section 4.04(b) hereof, within one hundred twenty days after the noncompletion of performance of any contract for Construction or the occurrence of an event of damage or destruction to the Lease Premises, IFA, through any Authorized Officer of IFA, shall deliver to RDA and the Trustee the written opinion of the engineer referred to in this Section 7.05 stating whether or not the conditions set forth above with respect thereto are satisfied. The proceeds of any performance bond or performance insurance paid on account of such noncompletion of performance and from any insurance paid on account of such damage or destruction (other than any rent loss insurance) shall be made available for, and to the extent necessary shall be applied to, the cost of such repair, reconstruction or replacement. Such proceeds not applied within thirty-six months after receipt thereof by IFA to such completion of performance or such repair, reconstruction or replacement shall be applied to any lawful purpose of IFA.

Section 7.06. Indemnification. RDA agrees to cause NICTD, to the extent provided in the Ground Lease or the Operating Lease, to release, protect, defend, indemnify and hold harmless RDA, IFA, the Bond Trustee, the Deposit Trustee, and their respective agents, employees, representatives and consultants, from and against any and all claims, causes of action, suits, judgments, demands, and/or losses (including attorney fees), in each case if asserted or incurred by or awarded to any third party, arising out of or relating to or resulting from (a) NICTD's design, construction or operation of the Rail Project, (b) any act, omission, negligence, or willful misconduct of NICTD, any of its Ancillary Users (as defined in the Operating Lease) or anyone acting under its control or for whom it is legally responsible, (c) failure of NICTD, or anyone acting under its control or for whom it is legally responsible, to perform or observe any requirement or obligation imposed by this Agreement and (d) arising out of any other act or occurrence within the Rail Project. NICTD's indemnity obligation shall not extend to: (i) any third party claim to the extent directly caused by the sole negligence, recklessness, willful misconduct, or breach of any material obligation under this Agreement or the Governance Agreement by IFA or RDA; or (ii) any claims, causes of action, suits, judgments, demands, and/or losses resulting from any action of RDA or IFA during an Operations Step-In Period (as defined in the Governance Agreement) or resulting from any actions taken by RDA or IFA after the exercise of any Construction Period Step-In Rights (as defined in the Governance Agreement), provided however that nothing herein shall relieve NICTD of responsibility to pay up to the Maximum NICTD Excess Cost Contribution for Excess Construction Costs (as both

such terms are defined in the Governance Agreement) irrespective of the exercise of Construction Period Step-In Rights. RDA and IFA shall have no obligation to indemnify NICTD.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Effectiveness. This Agreement shall be effective from and after the Effective Date, through the date on which this Agreement, or any extensions hereof, shall terminate in accordance with Section 3.02.

Section 8.02. Notices. All notices required or authorized to be given pursuant to this Agreement shall be in writing and shall be served personally or sent by certified mail to the main office of the party or parties to be notified, and the effective date thereof shall be the date of delivery, if served personally, or the date it is deposited in the mail, if mailed.

Section 8.03. Severability. In case any section or provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, that illegality, invalidity or inoperability shall not affect the remainder hereof or any other section or provision of this Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, which shall be construed and enforced as if that illegal, invalid or inoperable portion were not contained herein. Any such illegality, invalidity or inoperability of any application shall not affect any legal, valid, and operable application, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 8.04. Table of Contents; Captions. The Table of Contents included within this Agreement and the captions included throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 8.05. Governing Law. This Agreement shall be construed according to, and subject to, the laws of the State.

Section 8.06. Successors and Assigns. The rights and obligations of either party under this Agreement shall not be assignable by such party without the prior written consent of the other party, except that IFA may assign any of its rights under this Agreement to the Trustee. This Agreement shall inure to the benefit and shall be binding upon the respective successors and permitted assigns of the parties. Nothing herein expressed or implied is intended to confer upon any person, other than the parties or their respective successors or permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

INDIANA FINANCE AUTHORITY

By: \_\_\_\_\_  
Cristopher R. Johnston, Chair

Attest:

\_\_\_\_\_  
Dan Huges, Public Finance Director  
of the State of Indiana

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*June 20, 2019 draft*

Approved as to form and substance:

STATE BUDGET AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_, State Budget Director

Approved as to form and legality:

ATTORNEY GENERAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**FORM OF**  
**SUPPLEMENT TO RDA MEMBER DUES MASTER LEASE AGREEMENT**  
**(DOUBLE TRACK PROJECT)**

[AVAILABLE PORTION] [ADDITIONAL PROJECT] [ADDITIONAL LEASE PREMISES]

This SUPPLEMENT TO RDA MEMBER DUES MASTER LEASE AGREEMENT (DOUBLE TRACK PROJECT) made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (this "Supplemental Agreement"), by and between the INDIANA FINANCE AUTHORITY, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State of Indiana (the "IFA"), pursuant to Indiana Code, 5-1.2, and the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, duly created and existing under by virtue of Indiana Code 36-7.5 (the "RDA");

WITNESSETH:

WHEREAS, the parties entered into an RDA Member Dues Master Lease Agreement (Double Track Project) as of the first day of \_\_\_\_\_, 20\_\_ (the "Agreement"); and

WHEREAS, the Agreement provides that IFA and RDA may, on the date of the Agreement and from time to time thereafter, enter into one or more Supplemental Agreements, each of which may (1) set forth the Available Portion as of the date of such Supplemental Agreement, (2) add Additional Lease Premises to the Agreement when added under the terms of the Underlying Lease or to finance an Additional Project, (3) provide for the Construction of an Additional Project in the event such Additional Project shall be financed by an additional series of IFA Related Bonds, (4) add Additional Lease Premises so that there is no interruption in the lease rentals payable by RDA as described in Section 4.04(b) of the Agreement, (5) remove a portion of the Lease Premises being replaced, (6) state the rent payable for the Lease Premises, (7) provide that all lease covenants, including the obligation to pay rent, shall be unitary, whether covered by the Agreement or a Supplemental Agreement, or (8) contain such other covenants and agreements as the parties thereto agree upon; and

WHEREAS, the parties desire, by this Supplemental Agreement, to enter into such a Supplemental Agreement covering the [Available Portion] [Additional Project] [Additional Lease Premises], described in Schedule 1 attached herto, the total expenses incurred or to be incurred by IFA and allocable to which are currently estimated to be \$\_\_\_\_\_ and the Commencement Date for which is currently projected to be \_\_\_\_\_ (the "Projected Commencement Date");

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein set forth, the parties agree as follows:

Section 1. Agreement to Remain in Effect. Subject to the amendments, modifications and agreements contained in this Supplemental Agreement, all the terms and

provisions of the Agreement shall remain in full force and effect, and are hereby incorporated herein by this reference. All capitalized terms used herein and not defined herein shall have the respective meanings set forth in the Agreement.

Section 2. Description of the [Available Portion] [Additional Project] [Additional Lease Premises]. The [Available Portion] [Additional Project] [Additional Lease Premises] covered by this Supplemental Agreement is described in Schedule 1 attached hereto. [IFA and RDA represent that the Additional Project has been or will be constructed in accordance with the Governance Agreement, any Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable plans and specifications therefor. The Funded Interest Date for the Additional Project is \_\_\_\_\_.]

Section 3. Rental Payments. Commencing on the Commencement Date for the [Available Portion] [Additional Project] [Additional Lease Premises] through \_\_\_\_\_, \_\_\_\_\_, RDA shall pay on a monthly basis, in arrears, the rental payments set forth in the Addendum attached hereto in accordance with Article IV of the Agreement.

Section 4. Amendments. IFA and RDA shall, on the Commencement Date for the [Available Portion] [Additional Project] [Additional Lease Premises] and from time to time thereafter, enter into one or more amendments to this Supplemental Agreement, each of which amendments shall include an addendum superseding the Addendum to: (a) adjust the rental payments under this Supplemental Agreement to reflect the then estimated expenses incurred or to be incurred by IFA; and (b) make such other changes as the parties may agree upon.

Section 5. Covenants Unitary. All covenants under the Agreement, this Supplemental Agreement or any other Supplemental Agreement, including the obligation to pay rent, shall be unitary and include all Lease Premises, whether covered by the Agreement, this Supplemental Agreement or any other Supplemental Agreement.

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

INDIANA FINANCE AUTHORITY

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Public Finance Director  
of the State of Indiana

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*June 20, 2019 draft*

Approved as to form and substance:

STATE BUDGET AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_, State Budget Director

Approved as to form and legality:

ATTORNEY GENERAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ADDENDUM

MONTHLY RENTAL PAYMENT SCHEDULE

<u>Month Available For Use</u>	<u>Month Payments Due</u>	<u>Rental Payments</u>
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SCHEDULE 1

[AVAILABLE PORTION] [ADDITIONAL PROJECT] [ADDITIONAL LEASE PREMISES]

**EXHIBIT B**  
**LEASE PREMISES**

EXHIBIT C  
FORM OF MEMORANDUM

OPERATING LEASE AGREEMENT (DOUBLE TRACK PROJECT)

between

NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

as Lessor

and

NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

as Lessee

Dated as of \_\_\_\_\_, \_\_\_\_\_

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## OPERATING LEASE AGREEMENT (DOUBLE TRACK PROJECT)

This Operating Lease Agreement (Double Track Project) (this "Operating Lease") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, a separate body corporate and politic formed pursuant to Indiana Code 36-7.5, as supplemented and amended from time to time ("RDA"), and the NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT, a commuter transportation district and a municipal corporation formed pursuant to Indiana Code 8-5-15, as amended ("NICTD").

### RECITALS

1. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the hereinafter defined Governance Agreement;
2. The South Shore Line is a commuter train service between South Bend, Indiana and Millennium Station in Chicago, Illinois;
3. NICTD has owned and operated the South Shore Line for nearly forty years and has experience in developing capital rail projects for the South Shore Line and in requesting, obtaining and managing federal grant funds through the Federal Transit Administration;
4. RDA fosters development in northwest Indiana and has since its inception fostered economic development throughout northwest Indiana and has been vested pursuant to IC 36-7.5-4-18 with certain powers and duties with respect to the Rail Project;
5. IFA oversees State debt issuance and provides effective financing solutions to facilitate State, local and business investment in the State and has participated in numerous important economic development activities throughout the State;
6. RDA and NICTD have developed and advanced plans for improvements to the South Shore Line, specifically the Double Track Project (as defined below and also defined as the "Rail Project") and the West Lake Corridor Project (as defined below), which will improve the South Shore Line and foster economic development throughout northwest and north central Indiana by shortening commute times, providing new rail service to areas not serviced by rail transportation to Chicago, enhancing the economic and community development of the northwest Indiana region, and increasing the convenience to the areas served;
7. RDA has determined that providing assistance to the Rail Project in the manner herein provided serves a public purpose for which RDA was created;
8. The Rail Project is expected to encourage business investment in and near the station areas, provide faster, less expensive and reliable transportation, relieve existing and anticipated traffic congestion, reduce vehicular emissions, reduce commuting costs and attract and retain families and younger residents in northwest and north central Indiana;
9. The Rail Project is expected to provide faster travel times, accommodate more trains to improve service during rush hour travel and be safer to operate;

10. RDA, IFA and NICTD have identified and obtained committed local and State funding for the Rail Project;

11. NICTD has applied for necessary federal grant funding from FTA on behalf of RDA and the State, and in its capacity as the grantee, and as the signatory party to that certain Full Funding Grant Agreement with FTA, will maintain continuing control of the assets receiving FTA funding, subject to the terms of the Governance Agreement, the Development Agreement, if any, this Operating Lease and the other leases described herein;

12. The Parties desire to jointly complete FTA grant application processes for the Double Track Project, in order to facilitate the further development, design, construction and financing of the Double Track Project as improvements to the South Shore Line commuter rail system;

13. Any obligations of RDA or IFA shall not constitute a debt of the State or any municipality, or a pledge of the full faith and credit thereof, under the Constitution of the State;

14. Providing financial support to the Rail Project and the development and operation thereof are valid public purposes of RDA, IFA and NICTD, will contribute importantly to the economic and community development of northwest Indiana and will benefit the citizens of northwest Indiana;

15. In connection with the IFA Bonds, RDA, NICTD, and IFA are required to enter into one or more leases for the purpose of providing for the issuance and repayment of the IFA Bonds;

16. The funding for the payment of lease rentals by RDA for payment of the IFA Bonds will be provided from State appropriations, FTA Grant Reimbursements, moneys on deposit in the next generation trust fund established under IC 8-14-15.2 and Member Dues;

17. NICTD expects that FTA funding will fund a portion of the costs of the Rail Project, subject to local funding of the remaining share;

18. NICTD, RDA, and IFA intend to enter into the Revenue Trust Fund Agreement with the Deposit Trustee and the Bond Trustee for the purposes of receiving and safeguarding substantially all funds for the Rail Project, including substantially all funding sources to be used to pay lease rentals;

19. RDA and IFA are willing to assist NICTD in providing a mechanism to fund the Rail Project pursuant and subject to the Governance Agreement and the Development Agreement and to comply with and advance the public purposes described herein;

20. In connection therewith and subject to this Operating Lease, certain Real Estate and Rail Improvements will be leased by NICTD to RDA pursuant to the Ground Lease, then leased by RDA to IFA pursuant to the Underlying Lease, then leased by IFA to RDA pursuant to the Master Leases, and then leased by RDA to NICTD pursuant to this Operating Lease, and IFA

will issue the IFA Bonds and cause certain proceeds thereof to be made available to NICTD to pay costs incurred in undertaking the Rail Project;

21. Contemporaneous with or subsequent to the commencement of existence of the leasehold estate under this Operating Lease, RDA and IFA shall cause the Underlying Lease, IFA and RDA shall cause the Master Leases, and RDA and NICTD shall cause the Ground Lease, to each be effective; and

22. NICTD acknowledges that IFA's and RDA's right of occupancy and continuous possession of the Real Estate (and the Rail Improvements) and its lawful right to lease the Real Estate (and the Rail Improvements) throughout the stated term of this Operating Lease are essential to the funding mechanism for the Rail Project and the realization of the public purposes described herein.

WITNESSETH:

In consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

Section 1. Definitions; Interpretation.

(a) The terms defined in this Section shall for all purposes of this Operating Lease have the meanings herein specified unless the context otherwise requires.

"Ancillary Users" means any party that uses or has any interest in users of the Facilities of any kind whatsoever (including any subtenants, occupants, employees, agents, contractors, customers or invitees of NICTD).

"Authorized Officer of IFA" means the Chair of IFA or the Public Finance Director of the State of Indiana and, with reference to any act or document, also means any other person authorized by a resolution of IFA to perform such act or to sign such document.

"Authorized Officer of NICTD" means the President of NICTD and, with reference to any act or document, also means any other person authorized by a resolution of NICTD to perform such act or to sign such document.

"Authorized Officer of RDA" means the Chair or the Chief Executive Officer of RDA and, with reference to any act or document, also means any other person authorized by a resolution of RDA to perform such act or to sign such document.

"Biennium" means the biennium used for State budgetary and appropriation purposes.

"Bond Act" means Indiana Code 5-1.3, as amended or supplemented, or any successor thereto.

"Bond Trustee" means the trustee serving as such with respect to the IFA Bonds.

"Completion Certificate" for the Facilities or any portion thereof means a certificate (a) executed by an Authorized Officer of NICTD certifying that such Facilities or such portion thereof is available for use by RDA and (b) accepted by an Authorized Officer of RDA acknowledging that such Facilities or such portion thereof is available for use by RDA.

"Concurrence" means the written concurrence of the Authorized Officer of IFA and the Authorized Officer of RDA to the referred approval or other action of NICTD pursuant to the Governance Agreement, the Development Agreement or the Leases; *provided* that:

(a) concurrence may be withheld or delayed if the Authorized Officer of IFA and/or the Authorized Officer of RDA determines a referenced action (i) may adversely affect the Continuing Rent Obligation and (ii) be inconsistent with applicable laws (and the requirements of the Governance Agreement, the Development Agreement, the Leases and/or any documents related thereto);

(b) concurrence when given shall not be deemed to estop or otherwise waive IFA's and/or RDA's right to later assert or enforce any requirement under the Governance Agreement, the Development Agreement, the Leases and/or any documents related thereto, including IFA's and RDA's ability to seek claims, damages, losses and expenses, including attorneys' fees and other IFA and RDA costs arising out of or resulting from the action of NICTD for which concurrence has been given; and

(c) concurrence when given and later found to be contrary to any requirement under the Governance Agreement, the Development Agreement, the Leases and/or any documents related thereto shall not expose NICTD to a claim or assertion that such failure is, in and of itself, a failure to obtain a concurrence in the first instance and, as such, without having received a concurrence, a basis for a NICTD Event of Default. To the extent NICTD receives Concurrence under this Operating Lease it shall be able to rely upon such Concurrence.

"Continuing Rent Obligation" means (a) RDA's obligation under the Master Leases to continue to pay the Master Leases Rental and (b) NICTD's obligation under this Operating Lease to continue to pay the Operating Lease Rental, each without delay or diminution as to amount.

"Deposit Trustee" means the trustee bank acting as the Deposit Trustee under the Revenue Trust Fund Agreement.

"Development Agreement" means any development agreement entered into by NICTD, RDA and IFA for the purpose of governing the completion of the Rail Project in a manner consistent with and as contemplated by the Governance Agreement.

"Double Track Project" means the addition of an east/west rail line for a portion of the South Shore Line from Gary to Michigan City and related improvements, all as more fully described in Exhibit 1 of the Governance Agreement.

"Environmental Laws" means all federal, state and local statutes, common law principles, rules, regulations, ordinances, permits, licenses, written approvals, orders, writs, injunctions,

judgments and consent decrees relating to pollution control, protection of environmental quality, or protection of the health or safety of workers or the public from exposure to Hazardous Materials, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or hazardous, toxic or dangerous substances, materials or wastes in the environment (including ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials. Without limiting the generality of the foregoing, "Environmental Laws" shall encompass any "Superfund" or "Superlien" Law (including those otherwise referenced in this definition) and each of the following statutes and the regulations promulgated thereunder, in any similar applicable federal, state or local law, rule or regulation, each as amended: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980; (ii) the Solid Waste Disposal Act; (iii) the Hazardous Materials Transportation Act; (iv) the Toxic Substances Control Act; (v) the Clean Water Act; (vi) the Clean Air Act; (vii) the Safe Drinking Water Act; (viii) the National Environmental Policy Act of 1969; (ix) the Superfund Amendments and Reauthorization Act of 1986; (x) Title III of the Superfund Amendments and Reauthorization Act of 1986; (xi) the Federal Insecticide, Fungicide and Rodenticide Act; (xii) provisions of the Occupational Safety and Health Act of 1970 relating to the handling of and exposure to Hazardous Materials; and (xiii) any state or local analogue to any of the foregoing.

"Facilities" means the Real Estate and the Rail Improvements.

"FFGA" means the grant agreement awarded by FTA for the Rail Project.

"Force Majeure" shall have the meaning ascribed to such term in the Governance Agreement.

"FTA" means the Federal Transit Administration.

"FTA Grant Reimbursements" means funds received from FTA as reimbursement for expenditures by the Parties for moneys spent on one or both of the projects constituting the Rail Project pursuant to the FFGA for the Rail Project.

"Governance Agreement" means the Governance Agreement effective as of August 31, 2018, by and between NICTD, RDA and the IFA, as from time to time amended or supplemented in accordance with its terms.

"Ground Lease" means the Ground Lease Agreement (Double Track Project) as the same may be amended, modified or supplemented by any amendments or modifications thereof and supplements thereto entered into in accordance with the provisions hereof.

"Hazardous Materials" means any hazardous, toxic or dangerous substance, material and waste, including petroleum and hydrocarbon compounds derived from petroleum (including naturally occurring or man-made petroleum and derivative hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, solvents and/or any other

similar substances, materials or wastes that are or become regulated under any Environmental Law as hazardous or toxic.

"IC" means the Title, Article, Chapter and/or Section of the Indiana Code as referenced, and as such may be supplemented, amended or replaced from time to time.

"IFA" means the Indiana Finance Authority, a body politic and corporate, not a State agency, but an independent instrumentality exercising essential public functions, organized and existing under IC 5-1.2, or if said Indiana Finance Authority shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof.

"IFA Bonds" means one or more series of bonds, notes or other similar obligations issued under IC 5-1.3-1 *et seq.* to finance or refinance all or a portion of the costs for the Rail Project;

"Including" or "including" in this Operating Lease shall be construed as if followed by the phrase "without limitation" or "but not limited to".

"Independent Expert" means an independent registered architect, registered engineer, construction manager or contractor selected by NICTD with Concurrence.

"Lease Premises" means the leasehold estate and interests created by and pursuant to this Operating Lease, including, without limitation, the leasing of the Facilities, as the same may be amended and modified from time to time as needed for the Rail Project in the manner as provided for in the Leases.

"Leases" means, collectively, the Ground Lease, the Underlying Lease, the Master Leases and this Operating Lease.

"Master Leases" means the various leases from IFA to RDA in support of the IFA Bonds, including specifically the State Appropriation Master Lease Agreement (Double Track Project), the RDA Member Dues Master Lease Agreement (Double Track Project) and the Federal Grant Anticipation Master Lease Agreement (Double Track Project), each as from time to time amended or supplemented by any amendment or supplement thereto, including any supplemental memorandum of lease recorded in connection therewith.

"Master Leases Rental" means the rental payments payable by RDA as provided in the Master Leases.

"Member Dues" means the portion of the annual payments to RDA from the Cities of Gary, East Chicago and Hammond and the Counties of Lake and Porter due under Indiana Code 6-3.6-6-9, Indiana Code 36-7.5-4-2 and Indiana Code 6-3.6-11-6.

"Operating Lease" means this Operating Lease, as from time to time amended or supplemented by any amendment or supplement hereto, including any supplemental memorandum of lease recorded in connection therewith.

"Operating Lease Rental" means the rental payments payable by NICTD as provided in this Operating Lease.

"Parties" means IFA, NICTD and RDA.

"Permitted Encumbrances" means (a) this Operating Lease, the Ground Lease, the Underlying Lease, and the Master Leases, (b) utility, access and other easements, licenses and rights of way, covenants, conditions and restrictions, and other exceptions to title, which in each case will not materially and adversely affect the construction, development and operation of the Rail Project as contemplated by this Operating Lease or materially impair the interest of IFA, RDA or NICTD in, or its use of, the Facilities, (c) any liens to the extent permitted in this Operating Lease, and (d) any other liens which are not prohibited under this Operating Lease, but only if in the opinion of counsel satisfactory to IFA and the Bond Trustee, such liens do not materially impair the interest of IFA, RDA or NICTD in, or its use of, the Facilities.

"Permitted Uses" means any use permitted under the Governance Agreement, subject to Section 25(c) hereof.

"Rail Project" means the Double Track Project, as defined in IC 5-1.3-2-14 and IC 36-7.5-1-13.5.

"Rail Improvements" means the existing improvements located on the Real Estate, together with any new improvements constructed (or placed for use) on the Real Estate, whether as part of the Rail Project or otherwise.

"Real Estate" means the real property described on Exhibit A of this Operating Lease, as the same may be amended or modified in the manner provided herein and the other Leases.

"Revenue Trust Fund" means the development authority revenue fund established under the Revenue Trust Fund Agreement.

"Revenue Trust Fund Agreement" means the Revenue Trust Fund Agreement, dated as of \_\_\_\_\_, 20\_\_\_\_, entered into by and among RDA, IFA, NICTD, the Bond Trustee, and the Deposit Trustee in connection with the Revenue Trust Fund.

"State" means the State of Indiana.

"Supplemental Operating Lease" means any Operating Lease supplemental to this Operating Lease entered into in accordance herewith and substantially in the form set forth in Exhibit B.

"Trust Indenture" means the Trust Indentures to be entered into between IFA and the Bond Trustee relating to the IFA Bonds, and all supplements and amendments thereto.

"West Lake Corridor Project" means an approximately eight (8) mile new north/south passenger rail line connected to the existing South Shore Line located in Lake County, Indiana, with four stations from and including Hammond (Gateway Station) to and including

Munster/Dyer (Main Street Station, including all property owned or leased by NICTD for the operation of the South Shore Line over the West Lake Corridor Project), all as more fully described in Exhibit 2 of the Governance Agreement.

(b) The terms "herein", "hereto", "hereunder" and all terms of similar import shall be deemed to refer to this Operating Lease as a whole rather than to any Section or Exhibit to this Operating Lease.

(c) Unless otherwise specified, references in this Operating Lease to (i) "Section \_\_\_" shall be deemed to refer to the Section of this Operating Lease bearing the number so specified, (ii) "Exhibit \_\_\_" shall be deemed to refer to the Exhibit of this Operating Lease bearing the letter or number so specified, and (iii) this "Operating Lease" means this Operating Lease and any exhibits and attachments hereto.

(d) Captions used for or in Sections and Exhibits of this Operating Lease are for convenience of reference only and shall not affect the construction of this Operating Lease.

## Section 2. Lease of Facilities.

(a) In consideration of certain payments and other terms and conditions herein specified, RDA does hereby lease, demise and let to NICTD the Facilities (such constituting a part of the Lease Premises), to have and to hold the same with all rights, privileges, easements and appurtenances thereunto belonging unto NICTD for a term beginning on the date hereof and ending on \_\_\_\_\_; provided, however, the term shall end earlier or later than such date in the event the conditions set forth in Section 18 hereof are met, in which case, the term shall end on such date (the "Term").

(b) The parties agree that the Rail Project will be undertaken on the Real Estate pursuant to the Governance Agreement and the Development Agreement. The parties acknowledge and agree that the Real Estate is available for use from and after the date hereof, and such availability for use (and the value thereof to RDA and NICTD) is not in any way diminished while the Rail Project is being undertaken. By one or more endorsements each recorded as soon as practical and as a Supplemental Operating Lease entered into in substantially the form set forth in Exhibit B, but in any event, when the Rail Improvements are complete and ready for use as part of the Rail Project, the parties shall revise or increase the real estate described in Exhibit A, if necessary to reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part of the Rail Project are constructed; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases. When complete, the parties shall set forth and make known the date or dates the Rail Improvements, as part of the Rail Project (or portions thereof), are complete and ready for use, which shall also be made available as the Lease Premises pursuant to this Operating Lease.

(c) NICTD hereby represents and warrants that, upon compliance with its obligations under Section 19 hereof, RDA will possess a good and indefeasible leasehold estate, subject only to Permitted Encumbrances, to all of the Real Estate, which includes real estate upon which the

Rail Improvements that are part of the Rail Project are to be acquired, improved and constructed pursuant to the Governance Agreement and the Development Agreement, and NICTD warrants and will defend the same against all claims whatsoever not suffered or caused by the acts or omissions of RDA.

(d) Each of the Master Leases shall provide that in the event the Master Lease is terminated pursuant to the terms and conditions of such Master Lease following an event of default (as defined in such Master Lease) by RDA, this Operating Lease shall remain in full force and effect for the benefit of IFA (who upon termination of such Master Lease shall succeed to the rights, title and interest of RDA, as sublessor under this Operating Lease) and NICTD.

(e) NICTD shall not use the Facilities and shall use commercially reasonable efforts to not allow the Facilities to be used (including by any Ancillary Users) for any purpose or in any manner that would invalidate any policy of insurance now or hereafter carried in respect of the Facilities.

Section 3. Rental Payments; Supplements; Nature of Obligations.

(a) During the term of this Operating Lease, NICTD agrees to pay rentals to RDA without relief from valuation or appraisal laws and without a defense or set-off, counterclaim or recoupment, for the use of the Real Estate and all existing Rail Improvements (and if and when complete, and for the use of any Rail Improvements that are part of the Rail Project), in arrears in the monthly amount of One Dollar (\$1), together with such additional amounts as may be set forth in any Supplement Operating Lease, on or before the first (1<sup>st</sup>) business day of each calendar month (collectively, the "Operating Lease Rental").

(b) After the Commencement Date (as defined in the Master Leases), for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed or taken, so as to render such portion unavailable for use by NICTD, or shall for any other reason become unavailable for use by NICTD: (i) any rental payments due for such unavailable portion of the Lease Premises shall be abated during such unavailability by an amount equal to the product of the portion of (A) the rental payments otherwise due on such portion of the Lease Premises, times (B) a fraction of such rental payments, the numerator of which fraction equals the then estimated expenses incurred or to be incurred by RDA and allocable to such portion and the denominator of which fraction equals the then estimated expenses incurred or to be incurred by RDA and allocable to the Lease Premises; or (ii) RDA may add additional Lease Premises to this Operating Lease pursuant to a Supplemental Operating Lease so that there is no interruption in the lease rentals payable by NICTD as described in clause (a) above; provided that such additional Lease Premises are also added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.

(c) All rental obligations under this Operating Lease shall be deposited solely and exclusively into the Revenue Trust Fund.

(d) During the term of this Operating Lease, NICTD and RDA may enter into one or more Supplemental Operating Leases in the event NICTD proposes to construct portions of the

Rail Project that are not within the boundaries of the Facilities in substantially the form set forth in Exhibit B, so that such portions are within the boundaries of the Facilities.

(e) It is expressly understood and agreed by RDA and NICTD that the obligations of RDA and NICTD created by or arising out of this Operating Lease or of any amendments hereto shall not be, represent, or constitute an indebtedness of the State, IFA or RDA within the meaning or application of any constitutional limitation of the State or the laws of the State or a pledge of the faith or credit of the State, IFA or RDA.

Section 4. Damage or Destruction of Facilities; Failure to Construct.

(a) In the event the Facilities or any portion thereof shall be damaged or destroyed so as to render the same unfit for its intended use in the opinion of an Independent Expert, it shall then be the obligation of NICTD to cause the Facilities (or such portion thereof) to be restored and rebuilt as promptly as may be done, unavoidable strikes and other causes beyond the control of NICTD excepted, if in the opinion of an Independent Expert:

(i) the cost of such restoration or rebuilding does not exceed the amount of the proceeds received by the Trustee from the insurance provided for in Section 8 hereof, together with other moneys (I) IFA, at its discretion, may cause to be made available therefor pursuant to the terms of the Trust Indenture or the Revenue Trust Fund Agreement, as applicable, or (II) NICTD, at its discretion, may make available and deposit with the Trustee, and

(ii) such restoration or rebuilding can be sufficiently completed within the period of time covered by business income insurance provided for in Section 8 hereof in order to not adversely affect the Continuing Rent Obligation;

*provided, however,* that if NICTD shall fail to select such an Independent Expert (or fail to secure Concurrence in connection with the selection of such an Independent Expert) within ten (10) days after any request by RDA or IFA, then either RDA or IFA may select such Independent Expert to serve in such capacity at the sole cost and expense of NICTD.

(b) In the event such proceeds are insufficient to pay the restoration cost, such proceeds shall be applied as directed by RDA and IFA unless NICTD elects to make available and deposit with the Deposit Trustee or the Bond Trustee such shortfall and proceed with restoration in accordance with this Operating Lease.

Section 5. Nature of Operating Lease.

(a) It is expressly understood and agreed that this Operating Lease shall be what is known as an absolute net lease (i.e., that all costs and expenses in connection with the Facilities of any nature whatsoever shall be those of NICTD by reason of it being the tenant hereunder and all rent owing to RDA hereunder shall be net of all such costs and expenses) and that during the Term, NICTD shall be solely obligated to pay at its sole cost and expense, without reimbursement from or contribution by RDA, all costs of taxes and assessments, operations, maintenance and use in connection with or relating to the Facilities, including all costs and

expenses of decoration, maintenance, utility, janitorial and all other services, repair or replacement of all parts of the Facilities or improvement of the Facilities, including in the negotiation and maintenance of agreements with any Ancillary Users, subject to Section 12 hereof, in the manner provided in Section 7 hereof, except as otherwise provided in the Governance Agreement.

(b) NICTD shall cause any taxes due on the Rail Project to be timely paid to the applicable authorities, except to the extent of any good faith contests which have not yet been resolved, and it shall not assert any basis for taxation in respect of the Facilities that would negate or otherwise negatively impact any imposition or collection of taxes other than deductions, credits or other adjustments that would otherwise be applicable in the event the Leases were not in force or effect. The parties acknowledge and agree that this Operating Lease is, and is intended to be, a lease of real property including fixtures and mixed real and personal property (with any such personal property covered by this Operating Lease being incidental), and the Continuing Rent Obligation reflects lease payments which are made solely with respect to the lease of such real property.

(c) Except as otherwise provided in the Governance Agreement, NICTD shall retain all revenues from the operation of the Facilities, and except as otherwise provided in the Governance Agreement, neither IFA nor RDA shall have any responsibility to fund the ongoing costs, expenses and needs for operations, repairs, maintenance and replacements of or related to the Facilities.

Section 6. Nonliability of IFA or RDA. Except as otherwise provided in the Governance Agreement, neither IFA nor RDA shall be liable for damage caused by hidden defects or failure to keep the Facilities in repair and shall not be liable for any damage done or occasioned by or from any improvements, structures or equipment (including any stations, parking facilities, bridges, overpasses, crossings, switches, locomotives, railroad cars, utilities, plumbing, gas, water, boilers, steam or other pipes or sewage or the bursting or leaking of plumbing or heating fixtures or waste or soil pipe) in connection with the Facilities, nor for damage occasioned by natural events (whether occurring by age, wind, water, snow, ice, movements of earth, or otherwise). Neither IFA nor RDA shall be liable for any injury to NICTD, any Ancillary Users or any other person which injury occurs in, upon, about or near the Facilities howsoever arising. Neither IFA nor RDA shall be liable for damage to NICTD's property or to the property of any Ancillary Users or of any other person which may be located in, upon, about or near the Facilities. NICTD shall be responsible for preserving for the benefit of IFA and RDA usual and customary rights, claims and warranties against the persons or entities engaged to acquire, improve and construct any Facilities.

Section 7. Construction; Repairs and Maintenance; Alteration; Operations; Equipment or Furnishings.

(a) NICTD represents and covenants that the Rail Project has been or will be constructed in accordance with the terms and conditions of the Governance Agreement, the Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable approved plans and specifications therefor.

(b) NICTD shall keep and maintain the Facilities in good condition and repair in accordance with NICTD management practices in effect as of the date hereof and shall operate the Rail Project in an efficient and economical manner and in accordance with the Governance Agreement. NICTD shall make all necessary repairs, renewals, improvements and replacements to the Facilities and shall keep the Facilities in a clean and neat condition and in good and sound condition and repair, normal wear and tear excepted. The cost of such repairs, replacements and maintenance shall be (whether required because of the negligence, misuse or default of NICTD, any of its Ancillary Users, or otherwise) at NICTD's sole cost and expense, except as otherwise provided in the Governance Agreement.

(c) NICTD shall comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to NICTD, the Lease Premises and the Facilities. NICTD shall adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the Facilities and the operation thereof, and shall enforce such rules and regulations on a uniform basis.

(d) RDA shall comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to RDA and with respect to RDA's rights and responsibilities for the Lease Premises and the Facilities. To the extent reasonably necessary, the RDA shall adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the Facilities and the operation thereof, and shall enforce such rules and regulations on a uniform basis.

(e) NICTD shall have the right, at its sole cost and expense, without Concurrence, to make all alterations, modifications and additions and to do all demolition, remodeling and improvements it deems necessary or desirable to the Facilities, which do not materially reduce the rental value of the Lease Premises or adversely affect (i) the Continuing Rent Obligation and (ii) each referenced obligation that is required to be met by NICTD to be consistent with applicable law (including the Bond Act) and the requirements of the Governance Agreement, the Development Agreement, the Ground Lease, the Underlying Lease, the Master Leases, this Operating Lease and/or any documents related thereto. NICTD shall be liable to repair any damage to the Facilities resulting from such work.

(f) So long as this Operating Lease is in effect, NICTD may at any time and from time to time, at its sole cost and expense, install, modify, remove or replace items of moveable machinery, equipment, furnishings and other personalty in and upon the Facilities. All such personal property shall remain the sole property of NICTD, in which neither IFA nor RDA shall have any interest, and may be installed, modified, removed or replaced by NICTD at any time; *provided* that if such installation, modification, removal or replacement adversely affects (i) the Continuing Rent Obligation or (ii) any referenced obligation that is required to be met by NICTD to be consistent with applicable law (including the Bond Act) and the requirements of the Governance Agreement, the Development Agreement, the Ground Lease, the Underlying Lease, the Master Leases, this Operating Lease and/or any documents related thereto, then NICTD shall either: (y) repair and restore any and all damage to the Facilities resulting from the installation, modification, removal or replacement of any such property; or (z) compensate IFA and RDA for any loss in value to the Lease Premises (including any diminishment in the Master Leases Rental

and Operating Lease Rental) resulting from the installation, modification or removal of any such property.

(g) NICTD shall maintain or cause to be maintained such performance bonds or performance insurance (in a manner consistent with the Governance Agreement) with respect to contracts it may enter into for construction of the Rail Improvements as are usually maintained by those constructing improvements and facilities similar to the Rail Improvements. If performance of any contract for construction of the Rail Improvements is not completed in accordance with its terms and, in the opinion of a registered engineer selected by NICTD and acceptable to IFA and RDA, the cost of completion of such performance shall not exceed the amount of proceeds from any performance bond or performance insurance to be received by reason of such noncompletion of performance and other amounts available therefor, NICTD shall complete or cause to be completed such performance in the manner provided in, and subject to the conditions of, the Governance Agreement. The proceeds of any performance bond paid on account of such noncompletion of performance shall be made available for, and to the extent necessary shall be applied to, the cost of such construction.

Section 8. Insurance.

(a) NICTD, in the manner as provided in the Governance Agreement prior to completion of the Rail Project, and thereafter at its sole cost and expense, shall, during the full term of this Operating Lease, keep the Facilities insured against physical loss or damage, however caused, and otherwise in the manner and on a basis required in the Governance Agreement and the Development Agreement and consistent with commercially reasonable practices and only with such exceptions as are ordinarily required by insurers of rail lines of a similar type (as provided by an industry standard special cause of loss (or its equivalent) property insurance policy, which insurance shall not exclude flood or earthquake, but may provide for sublimits therefor), with good and responsible insurance companies. Such policies shall include terrorism coverage so long as the Terrorism Risk Insurance Program Reauthorization Act of 2015 [15 USC 6701] continues in its present form or an equivalent federal insurance program is available to NICTD. Such insurance shall be in an amount at least equal to the full replacement cost of such Facilities as reasonably determined by NICTD in consultation with an insurance consultant approved by RDA from and after the date the IFA Bonds are issued by IFA; *provided*, any reduction in excess of ten percent (10%) from the amount carried on the date this Operating Lease is entered into (including any reduction from any existing sublimits) shall only be permitted with Concurrence. In no event shall the insurance be in an amount which causes NICTD to be a co-insurer for the Facilities; *provided*, it is agreed that the provision of sublimits for earthquake and flood shall not be deemed to cause NICTD to be a co-insurer; *provided further* that such insurance may cover properties of NICTD other than the Facilities. Such insurance may contain a provision for a deductible in an amount that is customary and commercially reasonable, but not more than \$500,000 or such higher amount as from time to time determined by NICTD with Concurrence. After the occurrence of any insured casualty, NICTD agrees to pay the deductible amount of any loss to the Bond Trustee or such party directed by the Bond Trustee, as applicable, within ten (10) days following any request so made by IFA or RDA. A blanket property insurance form may be used if the insurance payable in respect of loss related to the Facilities is not less than the amount required by this Section and the

insurance proceeds related to damage to or destruction of the Facilities are payable to the Bond Trustee for the IFA Bonds.

(b) During the full term of this Operating Lease, NICTD, in the manner as provided in the Governance Agreement prior to completion of the Rail Project, and thereafter at its sole cost and expense, shall also, maintain business income insurance in an amount at least equal to the Operating Lease Rental on the Lease Premises leased by NICTD under this Operating Lease for a period of (2) years against physical loss or damage of the type insured against pursuant to the preceding requirements of this Section. Such business income insurance policies shall be for the benefit of IFA, RDA, and the Bond Trustee and shall name the Bond Trustee for the IFA Bonds as loss payee, which payment to such Bond Trustee may be limited to circumstances where Master Leases Rental is not made by RDA pursuant to a Master Lease.

(c) After the occurrence of any insured casualty related to the Facilities, NICTD shall give notice to the Bond Trustee, IFA and RDA. Such notice shall be given within five (5) days following such casualty and shall tentatively describe the nature of the casualty together with sufficient additional information to permit IFA and RDA to ascertain NICTD's plans for addressing such loss or damage (and meeting its obligations under this Operating Lease, including the amount NICTD plans to reserve to meet the requirements thereof that result from any deductible applicable under its insurance policies).

(d) In the event that an insurance program is developed by NICTD and approved by RDA and IFA as provided in the Governance Agreement, that insurance program and the requirements thereof shall be substituted herein as the insurance coverage requirements for this Operating Lease to the extent in conflict herewith or in addition hereto.

Section 9. Use of Insurance and Condemnation Proceeds.

(a) If all or any portion of the Facilities shall be damaged or destroyed or taken, NICTD shall, as expeditiously as possible, continuously and diligently prosecute, or cause to be prosecuted, repair, reconstruction or replacement thereof until completion. Within one hundred twenty (120) days after the occurrence of an event of damage or destruction to the Facilities or a taking thereof, NICTD, through any Authorized Officer of the NICTD, shall deliver to RDA and the Bond Trustee the written opinion of engineer selected by NICTD and reasonably acceptable to RDA and IFA stating whether or not the conditions set forth above with respect thereto are satisfied. The proceeds of any insurance paid on account of such damage or destruction or taking (other than any rent loss insurance) shall be made available for, and to the extent necessary shall be applied to, the cost of such repair, reconstruction or replacement, or otherwise in accordance with the terms and conditions of this Operating Lease.

(b) Proceeds of insurance against damage to or destruction of the Facilities which are paid to the Bond Trustee as described herein shall be held by the Bond Trustee pursuant to the applicable Trust Indenture and used by NICTD in accordance with the provisions of this Operating Lease, the Underlying Lease, the Master Leases, this Operating Lease, the Governance Agreement and such Trust Indenture. Proceeds of any condemnation of the Facilities (or portion thereof) shall be paid to the Bond Trustee and held by the Bond Trustee pursuant to the applicable Trust Indenture and used by NICTD in accordance with the provisions of this

Operating Lease, the Ground Lease, the Underlying Lease, the Master Leases, the Governance Agreement and such Trust Indenture.

Section 10. Liability Insurance. NICTD shall, at all times during the full term of this Operating Lease, keep in effect Commercial General Liability Insurance (which insurance shall not exclude blanket contractual liability, broad form property damage, personal injury, or fire damage coverage) covering the Facilities and NICTD's use thereof against claims for bodily injury and property damage, and insuring NICTD, IFA and RDA in amounts and in the manner required by the Governance Agreement and the Development Agreement. Such policies shall include terrorism coverage so long as the Terrorism Risk Insurance Program Reauthorization Act of 2015 [15 USC 6701] continues in its present form or an equivalent federal insurance program is available to NICTD. NICTD shall maintain for each policy year during the term of this Operating Lease aggregate limits for liability coverages of not less than fifty percent (50%) of liability coverage amounts as in effect on the date this Operating Lease is entered into unless otherwise approved by RDA; *provided* that if such policy limits are not reasonably available in the insurance marketplace, then NICTD may reduce such aggregate coverage amounts to the highest such amounts as are reasonably available in the insurance marketplace existing from time to time. NICTD shall make IFA, RDA and the State additional insureds on such policies.

Section 11. General Insurance Provisions. All insurance policies required by Sections 8 and 10 hereof shall be issued in a manner and with coverages consistent with those provided in the Ground Lease and in all instances, in a manner as provided in the Governance Agreement and the Development Agreement, by good and responsible insurance companies, each of which companies, selected by NICTD and reasonably approved by RDA, shall be rated at least "A-VII" (or an equivalent rating if such rating scale is discontinued or changed) by A.M. Best & Company (or by an equivalent rating service if A.M. Best & Company is no longer providing such types of ratings) and shall be countersigned by an agent of the insurer who is a licensed agent in the State. Such policies, or copies thereof, shall be held by NICTD as standing information for review by IFA, RDA and the Bond Trustee; *provided* that such policies shall be available for review by IFA, RDA and the Bond Trustee upon request, and shall be updated as changes are made to such policies. Such policies shall be subject to the requirement that in the event of a material reduction in policy limits or elimination of any coverages, NICTD will notify IFA, RDA and the Bond Trustee in writing by electronic or other means, with such notification including a description of the coverages so reduced or eliminated. If, at any time, NICTD fails to maintain insurance in accordance with Sections 8 and 10 hereof, such insurance may be obtained by IFA or RDA, or may be obtained by the Bond Trustee, and the amount paid for such insurance shall be payable by NICTD under this Operating Lease; *provided, however*, that neither IFA, RDA nor the Bond Trustee shall be under any obligation to obtain such insurance, and any action or non-action of RDA, IFA or the Bond Trustee in this regard shall not relieve NICTD of any consequences of a default in failing to obtain such insurance. The Bond Trustee shall be the loss payee on all casualty insurance required by this Operating Lease that becomes payable in respect of claims related to the Facilities.

Section 12. General Covenants.

(a) NICTD covenants that, except for Permitted Encumbrances and any liens, charges, encumbrances, or security interests created by an act or omission of RDA and/or IFA, it will not mortgage, impose any lien or claim upon, or otherwise encumber the Lease Premises (whether actual, contingent or otherwise), or permit any mortgage, lien, claim or encumbrance to exist thereon, and that it shall use and maintain the Facilities in material compliance with the laws and ordinances of the United States of America, the State, and all other proper governmental authorities.

(b) Each party hereto agrees that it will, at the request of the other party, execute and deliver to or upon the request of the other party such instrument or instruments as may be reasonably required by such party in order to assure or confirm NICTD's interest in the Lease Premises pursuant to the terms hereof and shall also deliver, from time to time, such instrument or instruments as may be reasonably requested by the other party or any tenant or subtenant of NICTD with respect to the covenant of quiet enjoyment herein.

(c) RDA covenants that, except for Permitted Encumbrances and any liens, charges, encumbrances, or security interests created by an act or omission of NICTD and/or IFA, it will not mortgage, impose any lien or claim upon, or otherwise encumber the Lease Premises (whether actual, contingent or otherwise), or permit any mortgage, lien, claim or encumbrance to exist thereon, and that it shall use and maintain the Facilities in material compliance with the laws and ordinances of the United States of America, the State, and all other proper governmental authorities.

Section 13. Covenants Regarding the Bond Act; IFA Bonds. NICTD shall timely comply with all requirements of NICTD created by the Bond Act, the Governance Agreement, the Development Agreement and any agreement or certificate executed by NICTD in connection with the issuance of the IFA Bonds.

Section 14. Utility Service. NICTD agrees to pay or cause to be paid all charges for (a) sewer, gas, water, electricity, light, heat or power utilities and services, (b) telephonic, communication and other information services, (c) other utility and like services, and (d) regulatory, track and freight fees and other fees, costs and expenses associated with the use and operation of the Facilities that are used, rendered or supplied upon or in connection with the Facilities throughout the term of this Operating Lease.

Section 15. Environmental Laws Covenants.

(a) With respect to the Facilities, (i) NICTD shall at all times comply and follow commercially reasonable business practice to cause others to comply, in all material respects, with all Environmental Laws and all licenses, permits, certificates, approvals and similar authorizations issued to NICTD thereunder, and such operations shall not give rise to any liability pursuant to any Environmental Law, (ii) NICTD shall promptly notify RDA and IFA upon becoming aware of any investigation, proceeding, complaint, order, directive, claim, citation or written notice by any governmental authority or any other Person arising under or relating to any violation of any Environmental Law that is pending against NICTD or threatened in writing against NICTD and shall take prompt and appropriate actions to respond thereto and to cure such violation (if any) and (iii) NICTD shall promptly notify RDA and IFA upon becoming

aware of any non-compliance with, or violation of, the requirements of any Environmental Law by NICTD in any material respect, or the release, spill, or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material or any other environmental, health or safety matter, which affects or gives rise to a material liability upon NICTD or any liability upon IFA or RDA.

(b) NICTD shall not cause or permit the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Materials on, under or about the Facilities, or the transportation to or from the Facilities of any Hazardous Materials, except as necessary and appropriate for its Permitted Uses, in which case, the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws and the standards prevailing in the railroad industry and at comparable facilities. Notwithstanding anything contained herein to the contrary, IFA and RDA shall not have any liability to NICTD resulting from any conditions existing, or events occurring, or any Hazardous Materials existing or generated, at, in, on, under or in connection with this Operating Lease or the Facilities.

Section 16. Indemnity by NICTD. NICTD shall release, protect, defend, indemnify and hold harmless the RDA, IFA, the Bond Trustee, the Deposit Trustee, and their respective agents, employees, representatives and consultants, from and against any and all claims, causes of action, suits, judgments, demands, and/or losses, in each case if asserted or incurred by or awarded to any third party, arising out of or relating to or resulting from (a) NICTD's design, construction or operation of the Rail Projects or the South Shore Line, (b) any act, omission, negligence, or willful misconduct of NICTD, any of its Ancillary Users or anyone acting under its control or for whom it is legally responsible (c) failure of NICTD, or anyone acting under its control or for whom it is legally responsible, to perform or observe any requirement or obligation imposed by this Operating Lease and (d) arising out of any other act or occurrence within the Facilities. NICTD's indemnity obligation shall not extend to: (i) any third party claim to the extent directly caused by the negligence, recklessness, willful misconduct, or breach of any material obligation under this Operating Lease or the Governance Agreement by IFA or RDA, or (ii) any claims, causes of action, suits, judgments, demands, and/or losses resulting from any action of the RDA or IFA during an Operations Step-In Period or resulting from any actions taken by the RDA or IFA after the exercise of any Construction Period Step-In Rights; *provided*, however, that nothing herein shall relieve NICTD of responsibility to pay up to the Maximum NICTD Excess Cost Contribution for Excess Construction Costs irrespective of the exercise of Construction Period Step-In Rights. The RDA and IFA shall have no obligation to indemnify NICTD.

Section 17. No Broker. NICTD hereby represents and warrants that no brokers or third-party involved in the negotiation and execution of this Operating Lease is entitled, as a result of the actions of the respective party, to a commission or other fee resulting from the execution of this Operating Lease.

Section 18. Transfer to NICTD. To the extent provided in the Governance Agreement, upon the later of the termination of the Governance Agreement and the final and full payment of all IFA Bonds, this Operating Lease shall terminate.

Section 19. Title to Real Estate.

(a) NICTD shall cause a final, fully paid, leasehold title insurance policy to be issued for the benefit of RDA by no later than the date the IFA Bonds are to be issued by IFA. In the event NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities, then by no later than the date as of which construction of any such portion commences, NICTD shall cause (i) an endorsement to be issued to, and on substantially the same terms as, the leasehold title insurance policy referenced in the prior sentence (or an additional final, fully paid, leasehold title insurance policy to be issued on substantially the same terms as the leasehold title insurance policy referenced in the prior sentence) to identify and insure thereunder any such necessary increase in the real estate described in Exhibit A and (ii) a Supplemental Operating Lease to be entered into in substantially the form set forth in Exhibit B in respect of such Real Estate; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.

(b) NICTD represents and warrants that it has a good and indefeasible estate in fee simple to all of the Real Estate, subject only to Permitted Encumbrances.

Section 20. Defaults; Remedies.

(a) If there is any NICTD uncured Event of Default (including any default in the observance of any other covenant, agreement or condition contained in this Operating Lease) (each an "Event of Default"), RDA may proceed to protect and enforce its rights, either at law or in equity, by suit, action, mandamus or other proceedings, whether for specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy (as contained in the Governance Agreement as may relate to this Operating Lease and such Event of Default); *provided* that all such rights and remedies taken in respect of this Operating Lease and any such Event of Default shall only be undertaken and pursued by RDA in strict conformity with this Section and the requirements and limitations set forth in the Governance Agreement.

(b) Except for extensions of time resulting from a Force Majeure event that are allowed in the Governance Agreement, time is of the essence of each term and provision of this Operating Lease to be observed by NICTD hereunder.

(c) If RDA shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Operating Lease, NICTD may pursue a claim for specific performance. If RDA shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Operating Lease and if NICTD shall, as a consequence thereof, recover a money judgment against RDA and/or IFA, NICTD agrees that (i) it shall look solely to RDA's and IFA's right, title and interest in and to the Lease Premises (which shall not include any right to set-off related to any payment due to RDA or IFA as required by the Governance

Agreement, the Development Agreement, this Operating Lease, the Underlying Lease, the Master Leases, the Ground Lease and/or any documents related thereto) for the collection of such judgment, (ii) it shall not look to any other assets of RDA and/or IFA in the levy, execution or other process for the satisfaction of NICTD's judgment, and (iii) it shall not enforce any execution or other process for the satisfaction of NICTD's judgment, unless such does not: (A) materially reduce the rental value of the Lease Premises; (B) adversely affect the Continuing Rent Obligation; or (C) materially and adversely affect any obligation that is required to be met by NICTD pursuant to applicable laws (including the Bond Act) and requirements of the Governance Agreement, the Development Agreement, this Operating Lease the Underlying Lease, the Master Leases, the Ground Lease and/or any documents related thereto.

(d) Neither party's failure or delay in exercising any of its rights or remedies or other provisions of this Operating Lease shall constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any default shall be deemed to be a waiver of any other default. RDA's receipt of less than the full amount due as herein provided shall not be construed to be other than a payment on account of such amount then due, nor shall any statement on NICTD's check or any letter accompanying NICTD's check be deemed an accord and satisfaction. No act or omission by RDA (or IFA) or their respective employees or agents during the term of this Operating Lease shall be deemed an acceptance of a surrender of the Lease Premises hereunder, and no agreement to accept such a surrender shall be valid unless in writing and signed by RDA and IFA.

(e) Notwithstanding anything herein, IFA may proceed to protect and enforce any rights or interests of RDA or IFA under this Operating Lease in its own name or on behalf of RDA in the name of RDA in its place and stead.

Section 21. Notices.

(a) All notices, certificates, requests or other communications required hereunder shall be sufficient only if given in writing, prior to the matter requiring notice and shall be deemed given (i) one (1) business day after being deposited for next day delivery; (ii) three (3) business days after mailing when mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) the same day if hand delivered (or if sent by both facsimile and email) during a business day, addressed as follows:

To RDA: Northwest Indiana Regional Development Authority  
9800 Connecticut Drive  
Crown Point, IN 46307  
Attention: President

With a Copy to: Ice Miller LLP  
One American Square 2900  
Indianapolis, IN 46282

To IFA: Indiana Finance Authority  
1 North Capitol, Suite 900  
Indianapolis, Indiana 46204

Attention: Public Finance Director of the State of Indiana  
and General Counsel  
Facsimile (317) 232-6786 / Electronic mail (to  
DHuge@ifa.IN.gov; and ASeiwert@ifa.IN.gov)

To NICTD: Northern Indiana Commuter Transportation District  
33 East U.S. Highway 12  
Chesterton, Indiana 46304  
Attention: President and/or Chief Executive Officer

With a Copy to: Northern Indiana Commuter Transportation District  
33 E. US Highway 12  
Chesterton, IN 46304  
Attention: Office of General Counsel

(b) Any party hereunder may, by notice given hereunder, designate any further or different addressees to which subsequent notices, certificates, requests or other communications shall be sent.

Section 22. Construction of Covenants. All provisions contained herein shall be construed in accordance with the provisions of the Bond Act, the Governance Agreement and the Development Agreement and to the extent of any material inconsistencies between the covenants and agreements in this Operating Lease, the Governance Agreement, and the Development Agreement and the provisions of the Bond Act, the provisions of the Bond Act, then the Governance Agreement, then this Operating Lease, and then the Development Agreement, shall be deemed to be controlling and binding upon the parties.

Section 23. Supplemental Operating Leases. RDA and NICTD may, from time to time hereafter, enter into one or more Supplemental Operating Leases, each of which: (a) shall provide that all covenants contained in this Operating Lease shall be unitary and include all parts of the Lease Premises, whether leased pursuant to this original Operating Lease or pursuant to any Supplemental Operating Lease (*provided* that the foregoing shall not limit or restrict the parties from having differing covenants and obligations applicable to any Supplemental Operating Leases related to portions of the Rail Project NICTD proposes to be constructed that are not within the existing boundaries of the Facilities); and (b) may contain such other covenants and agreements as the parties thereto agree upon.

Section 24. No Personal Liability. No recourse shall be had for any payment due under this Operating Lease or for any claim based thereon or upon any obligation, covenant or agreement in this Operating Lease contained against any past, present or future member, officer, employee, agent or official of IFA, RDA or NICTD, or any successor thereof, either directly or through IFA, RDA or NICTD, or any successor thereof, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability for any such person is hereby expressly waived and released as a condition of and consideration for the execution of this Operating Lease and issuance of the IFA Bonds.

Section 25. Successors or Assigns; Use Restrictions.

(a) All covenants of this Operating Lease, whether by RDA or NICTD, shall inure to the benefit of and be binding upon the permitted successors and assigns of the respective parties hereto. This Operating Lease shall not be assigned by NICTD without the prior written consent of RDA and IFA, and in such event the assignor shall not be relieved of its obligations hereunder unless permitted by RDA and IFA. This Operating Lease may be assigned by RDA to IFA without the prior written consent of NICTD as and to the extent permitted by the Bond Act. Any assignment in contravention of this Section shall be null and void *ab initio*.

(b) Notwithstanding any other provision of this Operating Lease to the contrary, NICTD covenants that it: (a) will not use or permit the Facilities or any portion thereof for any private business use within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended from time to time, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, and (b) will comply with Section 148(f) of the Internal Revenue Code of 1986, as amended from time to time. Any agreement entered into by NICTD in violation of this Section 25 shall be of no force or effect and shall not convey any rights or impose any obligation in respect to it, at law or in equity.

(c) Requests for consent to private business use shall be sent in writing by NICTD to IFA and RDA. Each such request shall include a final draft of the proposed conveyance, lease, sublease, management or incentive payment contract, license or other agreement that may give rise to such private business use, together with a description of the timing and the rationale for entering into such agreement (the "Proposed Private Business Use"). IFA and RDA shall conduct their review and approve or reject, in writing, such request within 30 days of receipt. If no response is made to a request for consent to private business use within 30 days of receipt, then NICTD shall provide additional written notice to IFA and RDA that the Proposed Private Business Use will be deemed to be approved. If no response to this additional written notice is received within three business days of receipt of the additional written notice by IFA and RDA, then the request shall be deemed approved. In the event a request for consent to private business use is deemed approved, NICTD shall have the right to proceed as though consent to the Proposed Private Business Use was expressly provided by IFA and RDA. In any event, upon the execution and delivery by NICTD of any such agreement, NICTD shall provide IFA and RDA a copy of such executed agreement within 10 business days of the execution thereof.

Section 26. Validity. All terms, covenants and conditions contained in this Operating Lease shall include all parts of the Facilities, whether leased pursuant to the original Operating Lease or pursuant to any Supplemental Operating Lease thereto.

Section 27. Severability; Complete Agreement; Counterparts; Survival of Terms; Governing Law; Etc.

(a) All the covenants, agreements, terms and conditions required under the laws of the State, including the Bond Act, to be included in any lease entered into under Indiana Code 5-1.3-5 are incorporated herein by this reference.

(b) In case any section or provision of this Operating Lease, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Operating Lease, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Operating Lease or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Operating Lease, which shall be construed and enforced as if that illegal, invalid or inoperable portion were not contained herein. Any such illegality, invalidity or inoperability of any application thereof shall not affect any legal, valid and operable application thereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

(c) This Operating Lease represents the entire agreement between RDA and NICTD covering everything agreed upon or understood in the creation of the estate created by this Operating Lease and related transactional matters; *provided*, however, that the parties contemplate and agree that the provisions of the Governance Agreement, the Development Agreement, the other Leases and/or any documents related thereto contain related undertakings and such shall be given their full meaning and effect. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Operating Lease except by a written agreement executed by RDA and NICTD.

(d) The parties each acknowledge that the terms and conditions of this Operating Lease have been the subject of active and complete negotiations represented by competent professional counsel and advisors, and that such terms and conditions should not be construed in favor of or against any party by reason of the extent to which any party or its professional counsel and advisors participated in the preparation of this Operating Lease.

(e) This Operating Lease may be executed in duplicate counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

(f) The covenants and obligations under Sections 6, 13, 15, 16, 20, and 24 hereof shall survive the expiration or earlier termination of this Operating Lease.

(g) This Operating Lease shall be construed according to, and subject to, the laws of the State.

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IN WITNESS WHEREOF, the parties hereto have caused this Operating Lease to be executed for and on their behalf as of the day and year first hereinabove written.

**"RDA"**

**NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY, AS  
LESSOR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northwest Indiana Regional Development Authority ("RDA"), and acknowledged the execution of the foregoing Operating Lease Agreement (Double Track Project) for and on behalf of RDA.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)  
Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

\_\_\_\_\_

**"NICTD"**

**NORTHERN INDIANA COMMUTER  
TRANSPORTATION DISTRICT, AS  
LESSEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northern Indiana Commuter Transportation District ("NICTD"), and acknowledged the execution of the foregoing Operating Lease Agreement (Double Track Project) for and on behalf of NICTD.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

\_\_\_\_\_

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*This instrument prepared by: Philip C Genetos, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, IN 46282*

*I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Philip C Genetos*

**EXHIBIT A**

**LEGAL DESCRIPTION AND MAP OF THE REAL ESTATE**

**Map of the Real Estate.** Real property in \_\_\_\_\_  
\_\_\_\_\_, as depicted as follows:

[End of Exhibit A]

**EXHIBIT B**  
**FORM OF**  
**SUPPLEMENTAL OPERATING LEASE AGREEMENT (DOUBLE TRACK PROJECT)**  
**BETWEEN**  
**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY**  
**AND**  
**NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT**

SUPPLEMENTAL OPERATING LEASE AGREEMENT (DOUBLE TRACK PROJECT)  
BETWEEN  
NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY  
AND  
NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

This SUPPLEMENTAL OPERATING LEASE AGREEMENT (DOUBLE TRACK PROJECT) (this "Supplemental Operating Lease"), entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, a separate body corporate and politic formed pursuant to Indiana Code 36-7, as supplemented and amended from time to time ("RDA"), and the NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT, a commuter transportation district and a municipal corporation formed pursuant to Indiana Code 8-5-15, as supplemented and amended from time to time ("NICTD").

WITNESSETH:

WHEREAS, NICTD entered into an Operating Lease Agreement (Double Track Project) with RDA dated as of \_\_\_\_\_, 20\_\_ (the "Operating Lease"); and

WHEREAS, all terms not otherwise defined in this Supplemental Operating Lease shall have the meanings ascribed to them in the Operating Lease; and

[WHEREAS, it is provided in the Operating Lease that after the Commencement Date, for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed or taken, so as to render such portion unavailable for use by NICTD, or shall for any other reason become unavailable for use by NICTD, RDA may add additional Lease Premises to the Operating Lease pursuant to a Supplemental Operating Lease so that there is no interruption in the lease rentals payable by NICTD to RDA pursuant to the Operating Lease; provided that such additional Lease Premises are also added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Operating Lease that in the event NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities, then by no later than the date as of which construction of any such portions commences, NICTD shall cause a Supplemental Operating Lease to be entered into for the purpose of adding to the Real Estate the pertinent real estate on which such portions of the Rail Project shall be located; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Operating Lease that when the Rail Improvements are complete and ready for use as part of the Rail Project, the parties shall revise and increase the real estate described in Exhibit A to the Operating Lease, if necessary to reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part

of the Rail Project have been constructed; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Operating Lease that RDA and NICTD may enter into one or more Supplemental Operating Leases, each of which: (1) shall provide that all covenants contained in the Operating Lease shall be unitary and include all parts of the Lease Premises, whether leased pursuant to the Operating Lease or pursuant to any Supplemental Operating Lease (*provided* that the foregoing shall not limit or restrict the parties from having differing covenants and obligations applicable to any Supplemental Operating Leases related to portions of the Rail Project NICTD proposes to be constructed that are not within the existing boundaries of the Facilities); and (2) may contain such other covenants and agreements as the parties thereto agree upon.]

NOW, THEREFORE, IT IS HEREBY AGREED, CERTIFIED AND STIPULATED by the undersigned as follows:

[Section 1. Addition to Real Estate After Commencement Date. Certain portions of the Lease Premises have been damaged or destroyed, thereby rendering such portions unavailable for use by NICTD, or have otherwise become unavailable for use by NICTD. NICTD has added additional Lease Premises to the Ground Lease pursuant to a Supplemental Ground Lease. Therefore, the Lease Premises set forth in Exhibit A to the Operating Lease shall be hereafter amended to read as set forth in Appendix I attached hereto, so that RDA may lease such additional Lease Premises to NICTD pursuant to this Supplemental Operating Lease, thereby resulting in no interruption in the lease rentals payable by NICTD to RDA pursuant to the Operating Lease. Such additional Lease Premises are also being added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.]

[Section   . Addition to Real Estate Prior to Construction. NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities set forth in Exhibit A to the Operating Lease. Therefore, the boundaries of the Facilities set forth in Exhibit A to the Operating Lease shall be hereafter amended to read as set forth in Appendix I attached hereto, which revised boundaries shall include the pertinent real estate on which such portions of the Rail Project shall be located. Such additional Real Estate is also being added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.]

[Section   . Addition to Real Estate After Construction. Certain Rail Improvements are now complete and ready for use as part of the Rail Project, and it is now necessary to revise or increase the real estate described in Exhibit A to the Operating Lease, because such Exhibit A does not reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part of the Rail Project have been constructed. Therefore, for such purpose, Exhibit A to the Operating Lease shall be hereafter amended to read as set forth in Appendix I

attached hereto. Such additional Real Estate is also being added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.]

Section \_\_. All covenants contained in the Operating Lease, including this Supplemental Operating Lease, shall be unitary and include all parts of the Lease Premises, whether leased pursuant to the Operating Lease or pursuant to any Supplemental Operating Lease.

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IN WITNESS WHEREOF, the undersigned have caused this Supplemental Operating Lease to be executed for and on their behalf as of the day and year first above written.

"RDA"

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

"NICTD"

NORTHERN INDIANA COMMUTER  
TRANSPORTATION DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This instrument prepared by: \_\_\_\_\_



STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northwest Indiana Regional Development Authority ("RDA"), and acknowledged the execution of the foregoing Supplemental Operating Lease Agreement (Double Track Project) for and on behalf of RDA.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

\_\_\_\_\_

[REMAINDER OF PAGE LEFT BLANK]

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northern Indiana Commuter Transportation District ("NICTD"), and acknowledged the execution of the foregoing Supplemental Operating Lease Agreement (Double Track Project) for and on behalf of NICTD.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

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[APPENDIX I

LEGAL DESCRIPTION AND MAP OF THE REAL ESTATE]



GROUND LEASE AGREEMENT (WEST LAKE PROJECT)

between

NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

as Lessor

and

NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

as Lessee

Dated as of \_\_\_\_\_ 1, 20\_\_

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## GROUND LEASE AGREEMENT (WEST LAKE PROJECT)

This Ground Lease Agreement (West Lake Project) (this "Ground Lease") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT, a commuter transportation district and a municipal corporation formed pursuant to Indiana Code 8-5-15, as amended ("NICTD"), and the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, a separate body corporate and politic formed pursuant to Indiana Code 36-7.5, as supplemented and amended from time to time ("RDA").

### RECITALS

1. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the hereinafter defined Governance Agreement;
2. The South Shore Line is a commuter train service between South Bend, Indiana and Millennium Station in Chicago, Illinois;
3. NICTD has owned and operated the South Shore Line for nearly forty years and has experience in developing capital rail projects for the South Shore Line and in requesting, obtaining and managing federal grant funds through the Federal Transit Administration;
4. RDA fosters development in northwest Indiana and has since its inception fostered economic development throughout northwest Indiana and has been vested pursuant to IC 36-7.5-4-18 with certain powers and duties with respect to the Rail Project;
5. IFA oversees State debt issuance and provides effective financing solutions to facilitate State, local and business investment in the State and has participated in numerous important economic development activities throughout the State;
6. RDA and NICTD have developed and advanced plans for improvements to the South Shore Line, specifically the Double Track Project and the West Lake Corridor Project, which will improve the South Shore Line and foster economic development throughout northwest and north central Indiana by shortening commute times, providing new rail service to areas not serviced by rail transportation to Chicago, enhancing the economic and community development of the northwest Indiana region, and increasing the convenience to the areas served;
7. RDA has determined that providing assistance to the Rail Project in the manner herein provided serves a public purpose for which RDA was created;
8. The Rail Project is expected to encourage business investment in and near the station areas, provide faster, less expensive and reliable transportation, relieve existing and anticipated traffic congestion, reduce vehicular emissions, reduce commuting costs and attract and retain families and younger residents in northwest and north central Indiana;
9. The Rail Project is expected to provide faster travel times, accommodate more trains to improve service during rush hour travel and be safer to operate;

10. RDA, IFA and NICTD have identified and obtained committed local and State funding for the Rail Project;

11. NICTD has applied for necessary federal grant funding from FTA on behalf of RDA and the State, and in its capacity as the grantee, and as the signatory party to that certain Full Funding Grant Agreement with FTA, will maintain continuing control of the assets receiving FTA funding, subject to the terms of the Governance Agreement, the Development Agreement, if any, this Ground Lease and the other leases described herein;

12. The Parties desire to jointly complete FTA grant application processes for the West Lake Corridor Project, in order to facilitate the further development, design, construction and financing of the West Lake Corridor Project as improvements to the South Shore Line commuter rail system;

13. Any obligations of RDA or IFA shall not constitute a debt of the State or any municipality, or a pledge of the full faith and credit thereof, under the Constitution of the State;

14. Providing financial support to the Rail Project and the development and operation thereof are valid public purposes of RDA, IFA and NICTD, will contribute importantly to the economic and community development of northwest Indiana and will benefit the citizens of northwest Indiana;

15. In connection with the IFA Bonds, RDA, NICTD, and IFA are required to enter into one or more leases for the purpose of providing for the issuance and repayment of the IFA Bonds;

16. The funding for the payment of lease rentals by RDA for payment of the IFA Bonds will be provided from State appropriations, FTA Grant Reimbursements, moneys on deposit in the next generation trust fund established under IC 8-14-15.2 and Available Revenues;

17. NICTD expects that FTA funding will fund a portion of the costs of the Rail Project, subject to local funding of the remaining share;

18. NICTD, RDA, and IFA intend to enter into the Revenue Trust Fund Agreement with the Deposit Trustee and the Bond Trustee for the purposes of receiving and safeguarding substantially all funds for the Rail Project, including substantially all funding sources to be used to pay lease rentals;

19. RDA and IFA are willing to assist NICTD in providing a mechanism to fund the Rail Project pursuant and subject to the Governance Agreement and the Development Agreement and to comply with and advance the public purposes described herein;

20. In connection therewith and subject to this Ground Lease, certain Real Estate and Rail Improvements will be leased by NICTD to RDA pursuant to this Ground Lease, then leased by RDA to IFA pursuant to the Underlying Lease, then leased by IFA to RDA pursuant to the Master Leases, and then leased by RDA to NICTD pursuant to the Operating Lease, and IFA will issue the IFA Bonds and cause certain proceeds thereof to be made available to NICTD to pay costs incurred in undertaking the Rail Project;

21. Contemporaneous with or subsequent to the commencement of existence of the leasehold estate under this Ground Lease, RDA and IFA shall cause the Underlying Lease, IFA and RDA shall cause the Master Leases, and RDA and NICTD shall cause the Operating Lease, to each be effective; and

22. NICTD acknowledges that IFA's and RDA's right of occupancy and continuous possession of the Real Estate (and the Rail Improvements) and its lawful right to lease the Real Estate (and the Rail Improvements) throughout the stated term of this Ground Lease are essential to the funding mechanism for the Rail Project and the realization of the public purposes described herein.

WITNESSETH:

In consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

Section 1. Definitions; Interpretation.

(a) The terms defined in this Section shall for all purposes of this Ground Lease have the meanings herein specified unless the context otherwise requires.

"Ancillary Users" means any party that uses or has any interest in users of the Facilities of any kind whatsoever (including any subtenants, occupants, employees, agents, contractors, customers or invitees of NICTD).

"Authorized Officer of IFA" means the Chair of IFA or the Public Finance Director of the State of Indiana and, with reference to any act or document, also means any other person authorized by a resolution of IFA to perform such act or to sign such document.

"Authorized Officer of NICTD" means President of NICTD and, with reference to any act or document, also means any other person authorized by a resolution of NICTD to perform such act or to sign such document.

"Authorized Officer of RDA" means the Chair or the Chief Executive Officer of RDA and, with reference to any act or document, also means any other person authorized by a resolution of RDA to perform such act or to sign such document.

"Available Revenues" means any available revenues of RDA, including, without limitation: (a) the portion of the annual payments to RDA from the Cities of Gary, East Chicago and Hammond and the Counties of Lake and Porter due under Indiana Code 6-3.6-6-9, Indiana Code 36-7.5-4-2 and Indiana Code 6-3.6-11-6(b); (b) amounts withheld by the auditor of State from certain municipalities within Lake County, as determined by the Indiana Department of Local Government Finance, and paid to the Secretary-Treasurer of RDA pursuant to Indiana Code 6-3.6-11-5.5; and (c) revenues derived from the Interlocal Agreements or from other actions taken by certain municipalities within Lake County offering to provide revenue to support and finance the Rail Project pursuant to Indiana Code 6-3.6-11-7. Notwithstanding the above definition, with respect to the initial series of IFA Bonds purchased by the State Treasurer as provided in IC 5-13-10.5-20, which are secured by rental payments to be made pursuant to the

RDA Available Revenues Master Lease Agreement (West Lake Project), to the extent provided in IC 36-7.5-4-21, it is understood that available revenues of RDA only include those sources described in clause (a) above.

"Biennium" means the biennium used for State budgetary and appropriation purposes.

"Bond Act" means Indiana Code 5-1.3, as amended or supplemented, or any successor thereto.

"Bond Trustee" means the trustee serving as such with respect to the IFA Bonds.

"Completion Certificate" for the Facilities or any portion thereof means a certificate (a) executed by an Authorized Officer of NICTD certifying that such Facilities or such portion thereof is available for use by RDA and (b) accepted by an Authorized Officer of RDA acknowledging that such Facilities or such portion thereof is available for use by RDA.

"Concurrence" means the written concurrence of the Authorized Officer of IFA and the Authorized Officer of RDA to the referred approval or other action of NICTD pursuant to the Governance Agreement, the Development Agreement or the Leases; *provided* that:

(a) concurrence may be withheld or delayed if the Authorized Officer of IFA and/or the Authorized Officer of RDA determines a referenced action (i) may adversely affect the Continuing Rent Obligation and (ii) be inconsistent with applicable laws (and the requirements of the Governance Agreement, the Development Agreement, the Leases and/or any documents related thereto);

(b) concurrence when given shall not be deemed to estop or otherwise waive IFA's and/or RDA's right to later assert or enforce any requirement under the Governance Agreement, the Development Agreement, the Leases, and/or any documents related thereto, including IFA's and RDA's ability to seek claims, damages, losses and expenses, including attorneys' fees and other IFA and RDA costs arising out of or resulting from the action of NICTD for which concurrence has been given; and

(c) concurrence when given and later found to be contrary to any requirement under the Governance Agreement, the Development Agreement, the Leases and/or any documents related thereto shall not expose NICTD to a claim or assertion that such failure is, in and of itself, a failure to obtain a concurrence in the first instance and, as such, without having received a concurrence, a basis for a NICTD Event of Default. To the extent NICTD receives Concurrence under this Ground Lease it shall be able to rely upon such Concurrence.

"Continuing Rent Obligation" means (a) RDA's obligation under the Master Leases to continue to pay the Master Leases Rental and (b) NICTD's obligation under the Operating Lease to continue to pay the Operating Lease Rental, each without delay or diminution as to amount.

"Deposit Trustee" means the trustee bank acting as the Deposit Trustee under the Revenue Trust Fund Agreement.

"Development Agreement" means any development agreement entered into by NICTD, RDA and IFA for the purpose of governing the completion of the Rail Project in a manner consistent with and as contemplated by the Governance Agreement.

"Double Track Project" means the addition of an east/west rail line for a portion of the South Shore Line from Gary to Michigan City and related improvements, all as more fully described in Exhibit 1 of the Governance Agreement.

"Environmental Laws" means all federal, state and local statutes, common law principles, rules, regulations, ordinances, permits, licenses, written approvals, orders, writs, injunctions, judgments and consent decrees relating to pollution control, protection of environmental quality, or protection of the health or safety of workers or the public from exposure to Hazardous Materials, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or hazardous, toxic or dangerous substances, materials or wastes in the environment (including ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials. Without limiting the generality of the foregoing, "Environmental Laws" shall encompass any "Superfund" or "Superlien" Law (including those otherwise referenced in this definition) and each of the following statutes and the regulations promulgated thereunder, in any similar applicable federal, state or local law, rule or regulation, each as amended: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980; (ii) the Solid Waste Disposal Act; (iii) the Hazardous Materials Transportation Act; (iv) the Toxic Substances Control Act; (v) the Clean Water Act; (vi) the Clean Air Act; (vii) the Safe Drinking Water Act; (viii) the National Environmental Policy Act of 1969; (ix) the Superfund Amendments and Reauthorization Act of 1986; (x) Title III of the Superfund Amendments and Reauthorization Act of 1986; (xi) the Federal Insecticide, Fungicide and Rodenticide Act; (xii) provisions of the Occupational Safety and Health Act of 1970 relating to the handling of and exposure to Hazardous Materials; and (xiii) any state or local analogue to any of the foregoing.

"Facilities" means the Real Estate and the Rail Improvements.

"FFGA" means the grant agreement awarded by FTA for the Rail Project.

"Force Majeure" shall have the meaning ascribed to such term in the Governance Agreement.

"FTA" means the Federal Transit Administration.

"FTA Grant Reimbursements" means funds received from FTA as reimbursement for expenditures by the Parties for moneys spent on one or both of the projects constituting the Rail Project pursuant to the FFGA for the Rail Project.

"Governance Agreement" means the Governance Agreement effective as of [\_\_\_\_\_], 2018, by and between NICTD, RDA and the IFA, as from time to time amended or supplemented in accordance with its terms.

"Ground Lease" means this Ground Lease Agreement (West Lake Project) as the same may be amended, modified or supplemented by any amendments or modifications hereof and supplements hereto entered into in accordance with the provisions hereof.

"Hazardous Materials" means any hazardous, toxic or dangerous substance, material and waste, including petroleum and hydrocarbon compounds derived from petroleum (including naturally occurring or man-made petroleum and derivative hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, solvents and/or any other similar substances, materials or wastes that are or become regulated under any Environmental Law as hazardous or toxic.

"IC" means the Title, Article, Chapter and/or Section of the Indiana Code as referenced, and as such may be supplemented, amended or replaced from time to time.

"IFA" means the Indiana Finance Authority, a body politic and corporate, not a State agency, but an independent instrumentality exercising essential public functions, organized and existing under IC 5-1.2, or if said Indiana Finance Authority shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof.

"IFA Bonds" means one or more series of bonds, notes or other similar obligations issued under IC 5-1.3-1 *et seq.* to finance or refinance all or a portion of the costs for the Rail Project;

"Including" or "including" in this Ground Lease shall be construed as if followed by the phrase "without limitation" or "but not limited to".

"Lease Premises" means the leasehold estate and interests created by and pursuant to this Ground Lease, including, without limitation, the leasing of the Facilities, as the same may be amended and modified from time to time as needed for the Rail Project in the manner as provided for in the Leases.

"Leases" means, collectively, this Ground Lease, the Underlying Lease, the Master Leases and the Operating Lease.

"Master Leases" means the various leases from IFA to RDA in support of the IFA Bonds, including specifically the State Appropriation Master Lease Agreement (West Lake Project), the RDA Available Revenues Master Lease Agreement (West Lake Project) and the Federal Grant Anticipation Master Lease Agreement (West Lake Project), each as from time to time amended or supplemented by any amendment or supplement thereto, including any supplemental memorandum of lease recorded in connection therewith.

"Master Leases Rental" means the rental payments payable by RDA as provided in the Master Leases.

"Operating Lease" means the Operating Lease, dated as of \_\_\_\_\_ 1, 20\_\_, from RDA to NICTD as from time to time amended or supplemented by any amendment or

supplement thereto, including any supplemental memorandum of lease recorded in connection therewith.

"Operating Lease Rental" means the rental payments payable by NICTD as provided in the Operating Lease.

"Parties" means IFA, NICTD and RDA.

"Permitted Encumbrances" means (a) this Ground Lease, the Underlying Lease, the Master Leases and the Operating Lease, (b) utility, access and other easements, licenses and rights of way, covenants, conditions and restrictions, and other exceptions to title, which in each case will not materially and adversely affect the construction, development and operation of the Rail Project as contemplated by this Ground Lease or materially impair the interest of IFA, RDA or NICTD in, or its use of, the Facilities, (c) any liens to the extent permitted in this Ground Lease, and (d) any other liens which are not prohibited under this Ground Lease, but only if in the opinion of counsel satisfactory to IFA and the Bond Trustee, such liens do not materially impair the interest of IFA, RDA or NICTD in, or its use of, the Facilities.

"Permitted Uses" means any use permitted under the Governance Agreement, subject to Section 24(b) hereof.

"Rail Project" means the West Lake Corridor Project, as defined in IC 5-1.3-2-14 and IC 36-7.5-1-13.5.

"Rail Improvements" means the existing improvements located on the Real Estate, together with any new improvements constructed (or placed for use) on the Real Estate, whether as part of the Rail Project or otherwise.

"Real Estate" means the real property described in Exhibit A attached hereto, as the same may be amended or modified in the manner provided herein and the other Leases.

"Revenue Trust Fund" means the development authority revenue fund established under the Revenue Trust Fund Agreement.

"Revenue Trust Fund Agreement" means the Revenue Trust Fund Agreement, dated as of August 1, 2018, entered into by and among RDA, IFA, NICTD, the Bond Trustee, and the Deposit Trustee in connection with the Revenue Trust Fund.

"State" means the State of Indiana.

"Supplemental Ground Lease" means any Ground Lease supplemental to this Ground Lease entered into in accordance herewith and substantially in the form set forth in Exhibit B.

"Trust Indenture" means the Trust Indentures to be entered into between IFA and the Bond Trustee relating to the IFA Bonds, and all supplements and amendments thereto.

"West Lake Corridor Project" means an approximately eight (8) mile new north/south passenger rail line connected to the existing South Shore Line located in Lake County, Indiana,

with four stations from and including Hammond (Gateway Station) to and including Munster/Dyer (Main Street Station, including all property owned or leased by NICTD for the operation of the South Shore Line over the West Lake Corridor Project), all as more fully described in Exhibit 2 of the Governance Agreement.

(b) The terms "herein", "hereto", "hereunder" and all terms of similar import shall be deemed to refer to this Ground Lease as a whole rather than to any Section or Exhibit to this Ground Lease.

(c) Unless otherwise specified, references in this Ground Lease to (i) "Section \_\_\_" shall be deemed to refer to the Section of this Ground Lease bearing the number so specified, (ii) "Exhibit \_\_\_" shall be deemed to refer to the Exhibit of this Ground Lease bearing the letter or number so specified, and (iii) this "Ground Lease" means this Ground Lease and any exhibits and attachments hereto.

(d) Captions used for or in Sections and Exhibits of this Ground Lease are for convenience of reference only and shall not affect the construction of this Ground Lease.

## Section 2. Ground Lease of Facilities.

(a) In consideration of certain payments and other terms and conditions herein specified, NICTD does hereby lease, demise and let to RDA the Facilities (such constituting a part of the Lease Premises), to have and to hold the same with all rights, privileges, easements and appurtenances thereunto belonging unto RDA for a term beginning on the date hereof and ending on \_\_\_\_\_; *provided*, however, the term shall end earlier or later than such date in the event the conditions set forth in Section 17 hereof are met, in which case, the term shall end on such date (the "Term").

(b) The parties agree that the Rail Project will be undertaken on the Real Estate pursuant to the Governance Agreement and the Development Agreement. The parties acknowledge and agree that the Real Estate is available for use from and after the date hereof, and such availability for use (and the value thereof to RDA and NICTD) is not in any way diminished while the Rail Project is being undertaken. By one or more endorsements each recorded as soon as practical and as a Supplemental Ground Lease entered into in substantially the form set forth in Exhibit B, but in any event, when the Rail Improvements are complete and ready for use as part of the Rail Project, the parties shall revise or increase the real estate described in Exhibit A, if necessary to reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part of the Rail Project are constructed; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.

(c) NICTD hereby represents and warrants that, upon compliance with its obligations under Section 18 hereof, RDA will possess a good and indefeasible leasehold estate, subject only to Permitted Encumbrances, to all of the Real Estate, which includes real estate upon which the Rail Improvements that are part of the Rail Project are to be acquired, improved and constructed pursuant to the Governance Agreement and the Development Agreement, and NICTD warrants

and will defend the same against all claims whatsoever not suffered or caused by the acts or omissions of RDA.

Section 3. Supplements; Nature of Obligations.

(a) NICTD acknowledges that it has received good, valuable, and sufficient consideration, including payment and reimbursement of certain costs and expenses from the proceeds of the IFA Bonds and other [Rail Project monies], from RDA and through IFA in respect of the rights and interests created by this Ground Lease. During the term of this Ground Lease, NICTD agrees that no additional payments by IFA or RDA to NICTD hereunder shall be made in respect of the rights and interests created by this Ground Lease.

(b) After the Commencement Date (as defined in the Master Leases), for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed or taken, so as to render such portion unavailable for use by RDA, or shall for any other reason become unavailable for use by RDA, NICTD may add additional Lease Premises to this Ground Lease pursuant to a Supplemental Ground Lease so that RDA may lease such additional Lease Premises to NICTD pursuant to a supplement to the Operating Lease; provided that such additional Lease Premises are also added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.

(c) During the term of this Ground Lease, NICTD and RDA may enter into one or more Supplemental Ground Leases in the event NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities in substantially the form set forth in Exhibit B, so that such portions are within the boundaries of the Facilities.

(d) It is expressly understood and agreed by RDA and NICTD that the obligations of RDA and NICTD created by or arising out of this Ground Lease or of any amendments hereto shall not be, represent, or constitute an indebtedness of the State, IFA or RDA within the meaning or application of any constitutional limitation of the State or the laws of the State or a pledge of the faith or credit of the State, IFA or RDA.

Section 4. Nature of Ground Lease. (a) It is expressly understood and agreed that this Ground Lease shall not be what is known as a net lease (i.e., that no expenses in connection with the Facilities of any nature whatsoever shall be those of RDA by reason of it being the tenant hereunder) and that during the Term, NICTD shall be solely obligated to pay at its sole cost and expense, without reimbursement from RDA, all costs of taxes and assessments, operations, maintenance and use in connection with or relating to the Facilities, including all costs and expenses of decoration, maintenance, utility, janitorial and all other services, repair or replacement of all parts of the Facilities or improvement of the Facilities, in the manner provided in Section 7 of the Operating Lease, except as otherwise provided in the Governance Agreement.

(b) NICTD shall cause any taxes due on the Rail Project to be timely paid to the applicable authorities, except to the extent of any good faith contests which have not yet been resolved, and it shall not assert any basis for taxation in respect of the Facilities that would negate or otherwise negatively impact any imposition or collection of taxes other than deductions, credits or other adjustments that would otherwise be applicable in the event the

Leases were not in force or effect. The parties acknowledge and agree that this Ground Lease is, and is intended to be, a lease of real property including fixtures and mixed real and personal property (with any such personal property covered by this Ground Lease being incidental), and the Continuing Rent Obligation reflects lease payments which are made solely with respect to the lease of such real property.

(c) Except as otherwise provided in the Governance Agreement, NICTD shall retain all revenues from the operation of the Facilities, and except as otherwise provided in the Governance Agreement, neither IFA nor RDA shall have any responsibility to fund the ongoing costs, expenses and needs for operations, repairs, maintenance and replacements of or related to the Facilities.

Section 5. Nonliability of IFA or RDA. Except as otherwise provided in the Governance Agreement, neither IFA nor RDA shall be liable for damage caused by hidden defects or failure to keep the Facilities in repair and shall not be liable for any damage done or occasioned by or from any improvements, structures or equipment (including any stations, parking facilities, bridges, overpasses, crossings, switches, locomotives, railroad cars, utilities, plumbing, gas, water, boilers, steam or other pipes or sewage or the bursting or leaking of plumbing or heating fixtures or waste or soil pipe) in connection with the Facilities, nor for damage occasioned by natural events (whether occurring by age, wind, water, snow, ice, movements of earth, or otherwise). Neither IFA nor RDA shall be liable for any injury to NICTD, any Ancillary Users or any other person which injury occurs in, upon, about or near the Facilities howsoever arising. Neither IFA nor RDA shall be liable for damage to NICTD's property or to the property of any Ancillary Users or of any other person which may be located in, upon, about or near the Facilities. NICTD shall be responsible for preserving for the benefit of IFA and RDA usual and customary rights, claims and warranties against the persons or entities engaged to acquire, improve and construct any Facilities.

Section 6. Construction; Repairs and Maintenance; Alteration; Operations; Equipment or Furnishings.

(a) NICTD represents and covenants that the Rail Project has been or will be constructed in accordance with the terms and conditions of the Governance Agreement, the Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable approved plans and specifications therefor.

(b) NICTD shall keep and maintain the Facilities in good condition and repair in accordance with NICTD management practices in effect as of the date hereof and shall operate the Rail Project in an efficient and economical manner and in accordance with the Governance Agreement. NICTD shall make all necessary repairs, renewals, improvements and replacements to the Facilities and shall keep the Facilities in a clean and neat condition and in good and sound condition and repair, normal wear and tear excepted. The cost of such repairs, replacements and maintenance shall be (whether required because of the negligence, misuse or default of NICTD, any of its Ancillary Users, or otherwise) at NICTD's sole cost and expense, except as otherwise provided in the Governance Agreement.

(c) NICTD shall comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to NICTD, the Lease

Premises and the Facilities. NICTD shall adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the Facilities and the operation thereof, and shall enforce such rules and regulations on a uniform basis.

(d) RDA shall comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to RDA, the Lease Premises and the Facilities. To the extent reasonably necessary, the RDA shall adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the Facilities and the operation thereof, and shall enforce such rules and regulations on a uniform basis.

(e) NICTD shall have the right, at its sole cost and expense, without Concurrence, to make all alterations, modifications and additions and to do all demolition, remodeling and improvements it deems necessary or desirable to the Facilities, which do not materially reduce the rental value of the Lease Premises or adversely affect (i) the Continuing Rent Obligation and (ii) each referenced obligation that is required to be met by NICTD to be consistent with applicable law (including the Bond Act) and the requirements of the Governance Agreement, the Development Agreement, this Ground Lease, the Underlying Lease, the Master Leases, the Operating Lease and/or any documents related thereto. NICTD shall be liable to repair any damage to the Facilities resulting from such work.

(f) So long as this Ground Lease is in effect, NICTD may at any time and from time to time, at its sole cost and expense, install, modify, remove or replace items of moveable machinery, equipment, furnishings and other personalty in and upon the Facilities. All such personal property shall remain the sole property of NICTD, in which neither IFA nor RDA shall have any interest, and may be installed, modified, removed or replaced by NICTD at any time; *provided* that if such installation, modification, removal or replacement adversely affects (i) the Continuing Rent Obligation or (ii) any referenced obligation that is required to be met by NICTD to be consistent with applicable law (including the Bond Act) and the requirements of the Governance Agreement, the Development Agreement, the Underlying Lease, the Master Leases, the Operating Lease and/or any documents related thereto, then NICTD shall either: (y) repair and restore any and all damage to the Facilities resulting from the installation, modification, removal or replacement of any such property; or (z) compensate IFA and RDA for any loss in value to the Lease Premises (including any diminishment in the Master Leases Rental and Operating Lease Rental) resulting from the installation, modification or removal of any such property.

(g) NICTD shall maintain or cause to be maintained such performance bonds or performance insurance (in a manner consistent with the Governance Agreement) with respect to contracts it may enter into for construction of the Rail Improvements as are usually maintained by those constructing improvements and facilities similar to the Rail Improvements. If performance of any contract for construction of the Rail Improvements is not completed in accordance with its terms and, in the opinion of a registered engineer selected by NICTD and acceptable to IFA and RDA, the cost of completion of such performance shall not exceed the amount of proceeds from any performance bond or performance insurance to be received by reason of such noncompletion of performance and other amounts available therefor, NICTD shall complete or cause to be completed such performance in the manner provided in, and subject to the conditions of, the Governance Agreement. The proceeds of any performance bond paid on

account of such noncompletion of performance shall be made available for, and to the extent necessary shall be applied to, the cost of such construction.

Section 7. Insurance.

(a) NICTD, in the manner as provided in the Governance Agreement prior to completion of the Rail Project, and thereafter at its sole cost and expense, shall, during the full term of this Ground Lease, keep the Facilities insured against physical loss or damage, however caused, and otherwise in the manner and on a basis required in the Governance Agreement and the Development Agreement and consistent with commercially reasonable practices and only with such exceptions as are ordinarily required by insurers of rail lines of a similar type (as provided by an industry standard special cause of loss (or its equivalent) property insurance policy, which insurance shall not exclude flood or earthquake, but may provide for sublimits therefor), with good and responsible insurance companies. Such policies shall include terrorism coverage so long as the Terrorism Risk Insurance Program Reauthorization Act of 2015 [15 USC 6701] continues in its present form or an equivalent federal insurance program is available to NICTD. Such insurance shall be in an amount at least equal to the full replacement cost of such Facilities as reasonably determined by NICTD in consultation with an insurance consultant approved by RDA from and after the date the IFA Bonds are issued by IFA; *provided*, any reduction in excess of ten percent (10%) from the amount carried on the date this Ground Lease is entered into (including any reduction from any existing sublimits) shall only be permitted with Concurrence. In no event shall the insurance be in an amount which causes NICTD to be a co-insurer for the Facilities; *provided*, it is agreed that the provision of sublimits for earthquake and flood shall not be deemed to cause NICTD to be a co-insurer; *provided further* that such insurance may cover properties of NICTD other than the Facilities. Such insurance may contain a provision for a deductible in an amount that is customary and commercially reasonable, but not more than \$500,000 or such higher amount as from time to time determined by NICTD with Concurrence. After the occurrence of any insured casualty, NICTD agrees to pay the deductible amount of any loss to the Bond Trustee or such party directed by the Bond Trustee, as applicable, within ten (10) days following any request so made by IFA or RDA. A blanket property insurance form may be used if the insurance payable in respect of loss related to the Facilities is not less than the amount required by this Section and the insurance proceeds related to damage to or destruction of the Facilities are payable to the Bond Trustee for the IFA Bonds.

(b) During the full term of this Ground Lease, NICTD, in the manner as provided in the Governance Agreement prior to completion of the Rail Project, and thereafter at its sole cost and expense, shall also, at its sole cost and expense, maintain business income insurance in an amount at least equal to the Operating Lease Rental on the Lease Premises leased by NICTD under the Operating Lease for a period of (2) years against physical loss or damage of the type insured against pursuant to the preceding requirements of this Section. Such business income insurance policies shall be for the benefit of IFA, RDA, and the Bond Trustee and shall name the Bond Trustee for the IFA Bonds as loss payee, which payment to such Bond Trustee may be limited to circumstances where Master Leases Rental is not made by RDA pursuant to a Master Lease.

(c) After the occurrence of any insured casualty related to the Facilities, NICTD shall give notice to the Bond Trustee, IFA and RDA. Such notice shall be given within five (5) days

following such casualty and shall tentatively describe the nature of the casualty together with sufficient additional information to permit IFA and RDA to ascertain NICTD's plans for addressing such loss or damage (and meeting its obligations under this Ground Lease, including the amount NICTD plans to reserve to meet the requirements thereof that result from any deductible applicable under its insurance policies).

(d) In the event that an insurance program is developed by NICTD and approved by RDA and IFA as provided in the Governance Agreement, that insurance program and the requirements thereof shall be substituted herein as the insurance coverage requirements for this Ground Lease to the extent in conflict herewith or in addition hereto.

Section 8. Use of Insurance and Condemnation Proceeds. (a) If all or any portion of the Facilities shall be damaged or destroyed or taken, NICTD shall, as expeditiously as possible, continuously and diligently prosecute, or cause to be prosecuted, repair, reconstruction or replacement thereof until completion. Within one hundred twenty (120) days after the occurrence of an event of damage or destruction to the Facilities or a taking thereof, NICTD, through any Authorized Officer of NICTD, shall deliver to RDA and the Bond Trustee the written opinion of engineer selected by NICTD and reasonably acceptable to RDA and IFA stating whether or not the conditions set forth above with respect thereto are satisfied. The proceeds of any insurance paid on account of such damage or destruction or taking (other than any rent loss insurance) shall be made available for, and to the extent necessary shall be applied to, the cost of such repair, reconstruction or replacement, or otherwise in accordance with the terms and conditions of this Ground Lease.

(b) Proceeds of insurance against damage to or destruction of the Facilities which are paid to the Bond Trustee as described herein shall be held by the Bond Trustee pursuant to the applicable Trust Indenture and used by NICTD in accordance with the provisions of this Ground Lease, the Underlying Lease, the Master Leases, the Operating Lease, the Governance Agreement and such Trust Indenture. Proceeds of any condemnation of the Facilities (or portion thereof) shall be paid to the Bond Trustee and held by the Bond Trustee pursuant to the applicable Trust Indenture and used by NICTD in accordance with the provisions of this Ground Lease, the Underlying Lease, the Master Leases, the Operating Lease, the Governance Agreement and the applicable Trust Indenture.

Section 9. Liability Insurance. NICTD shall, at all times during the full term of this Ground Lease, keep in effect Commercial General Liability Insurance (which insurance shall not exclude blanket contractual liability, broad form property damage, personal injury, or fire damage coverage) covering the Facilities and NICTD's use thereof against claims for bodily injury and property damage, and insuring NICTD, IFA and RDA in amounts and in the manner required by the Governance Agreement and the Development Agreement. Such policies shall include terrorism coverage so long as the Terrorism Risk Insurance Program Reauthorization Act of 2015 [15 USC 6701] continues in its present form or an equivalent federal insurance program is available to NICTD. NICTD shall maintain for each policy year during the term of this Ground Lease aggregate limits for liability coverages of not less than fifty percent (50%) of liability coverage amounts as in effect on the date this Ground Lease is entered into unless otherwise approved by RDA; *provided* that if such policy limits are not reasonably available in the insurance marketplace, then NICTD may reduce such aggregate coverage amounts to the

highest such amounts as are reasonably available in the insurance marketplace existing from time to time. NICTD shall make IFA, RDA and the State additional insureds on such policies.

Section 10. General Insurance Provisions. All insurance policies required by Sections 7 and 9 hereof shall be issued in the manner provided in the Governance Agreement and the Development Agreement by good and responsible insurance companies, each of which companies, selected by NICTD and reasonably approved by RDA, shall be rated at least "A-VII" (or an equivalent rating if such rating scale is discontinued or changed) by A.M. Best & Company (or by an equivalent rating service if A.M. Best & Company is no longer providing such types of ratings) and shall be countersigned by an agent of the insurer who is a licensed agent in the State. Such policies, or copies thereof, shall be held by NICTD for review by IFA, RDA and the Bond Trustee; *provided* that such policies shall be available for review by IFA, RDA and the Bond Trustee upon request, and shall be updated as changes are made to such policies. Such policies shall be subject to the requirement that in the event of a material reduction in policy limits or elimination of any coverages, NICTD will notify IFA, RDA and the Bond Trustee in writing by electronic or other means, with such notification including a description of the coverages so reduced or eliminated. If, at any time, NICTD fails to maintain insurance in accordance with Sections 7 and 9 hereof, such insurance may be obtained by IFA or RDA, or may be obtained by the Bond Trustee, and the amount paid for such insurance shall be payable by NICTD under this Ground Lease; *provided, however*, that neither IFA, RDA nor the Bond Trustee shall be under any obligation to obtain such insurance, and any action or non-action of RDA, IFA or the Bond Trustee in this regard shall not relieve NICTD of any consequences of a default in failing to obtain such insurance. The Bond Trustee shall be the loss payee on all casualty insurance required by this Ground Lease that becomes payable in respect of claims related to the Facilities.

Section 11. General Covenants. (a) NICTD covenants that, except for Permitted Encumbrances and any liens, charges, encumbrances, or security interests created by an act or omission of RDA and/or IFA, it will not mortgage, impose any lien or claim upon, or otherwise encumber the Lease Premises (whether actual, contingent or otherwise), or permit any mortgage, lien, claim or encumbrance to exist thereon, and that it shall use and maintain the Facilities in material compliance with the laws and ordinances of the United States of America, the State, and all other proper governmental authorities. NICTD agrees that it will, at the request of RDA, execute and deliver to or upon the request of RDA such instrument or instruments as may be reasonably required by RDA in order to assure or confirm RDA's interest in the Lease Premises pursuant to the terms hereof and shall also deliver, from time to time, such instrument or instruments as may be reasonably requested by RDA or any tenant or subtenant of RDA with respect to the covenant of quiet enjoyment contained in this Ground Lease, the Underlying Lease, the Master Leases, the Operating Lease, or the Governance Agreement.

(b) RDA covenants that, except for Permitted Encumbrances and any liens, charges, encumbrances, or security interests created by an act or omission of NICTD and/or IFA, it will not mortgage, impose any lien or claim upon, or otherwise encumber the Lease Premises (whether actual, contingent or otherwise), or permit any mortgage, lien, claim or encumbrance to exist thereon, and that it shall use and maintain the Facilities in material compliance with the laws and ordinances of the United States of America, the State, and all other proper governmental authorities.

Section 12. Covenants Regarding the Bond Act; IFA Bonds. NICTD shall timely comply with all requirements of NICTD created by the Bond Act, the Governance Agreement, the Development Agreement and any agreement or certificate executed by NICTD in connection with the issuance of the IFA Bonds.

Section 13. Utility Service. NICTD agrees to pay or cause to be paid all charges for (a) sewer, gas, water, electricity, light, heat or power utilities and services, (b) telephonic, communication and other information services, (c) other utility and like services, and (d) regulatory, track and freight fees and other fees, costs and expenses associated with the use and operation of the Facilities that are used, rendered or supplied upon or in connection with the Facilities throughout the term of this Ground Lease.

Section 14. Environmental Laws Covenants.

(a) With respect to the Facilities, (i) NICTD shall at all times comply and follow commercially reasonable business practice to cause others to comply, in all material respects, with all Environmental Laws and all licenses, permits, certificates, approvals and similar authorizations issued to NICTD thereunder, and such operations shall not give rise to any liability pursuant to any Environmental Law, (ii) NICTD shall promptly notify RDA and IFA upon becoming aware of any investigation, proceeding, complaint, order, directive, claim, citation or written notice by any governmental authority or any other Person arising under or relating to any violation of any Environmental Law that is pending against NICTD or threatened in writing against NICTD and shall take prompt and appropriate actions to respond thereto and to cure such violation (if any) and (iii) NICTD shall promptly notify RDA and IFA upon becoming aware of any non-compliance with, or violation of, the requirements of any Environmental Law by NICTD in any material respect, or the release, spill, or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material or any other environmental, health or safety matter, which affects or gives rise to a material liability upon NICTD or any liability upon IFA or RDA.

(b) NICTD shall not cause or permit the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Materials on, under or about the Facilities, or the transportation to or from the Facilities of any Hazardous Materials, except as necessary and appropriate for its Permitted Uses, in which case, the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws and the standards prevailing in the railroad industry and at comparable facilities. Notwithstanding anything contained herein to the contrary, IFA and RDA shall not have any liability to NICTD resulting from any conditions existing, or events occurring, or any Hazardous Materials existing or generated, at, in, on, under or in connection with this Ground Lease or the Facilities, except to the extent caused directly by the sole negligence or willful misconduct of the IFA or RDA or their respective agents, employees, or contractors.

Section 15. Indemnity by NICTD. NICTD shall release, protect, defend, indemnify and hold harmless the RDA, IFA, the Bond Trustee, the Deposit Trustee, and their respective agents, employees, representatives and consultants, from and against any and all claims, causes of action, suits, judgments, demands, and/or losses, in each case if asserted or incurred by or

awarded to any third party, arising out of or relating to or resulting from (a) NICTD's design, construction or operation of the Rail Projects or the South Shore Line, (b) any act, omission, negligence, or willful misconduct of NICTD, any of its Ancillary Users or anyone acting under its control or for whom it is legally responsible (c) failure of NICTD, or anyone acting under its control or for whom it is legally responsible, to perform or observe any requirement or obligation imposed by this Ground Lease and (d) arising out of any other act or occurrence within the Facilities. NICTD's indemnity obligation shall not extend to: (i) any third party claim to the extent directly caused by the negligence, recklessness, willful misconduct, or breach of any material obligation under this Ground Lease or the Governance Agreement by IFA or RDA, or (ii) any claims, causes of action, suits, judgments, demands, and/or losses resulting from any action of the RDA or IFA during an Operations Step-In Period or resulting from any actions taken by the RDA or IFA after the exercise of any Construction Period Step-In Rights; provided, however, that nothing herein shall relieve NICTD of responsibility to pay up to the Maximum NICTD Excess Cost Contribution for Excess Construction Costs irrespective of the exercise of Construction Period Step-In Rights. The RDA and IFA shall have no obligation to indemnify NICTD.

Section 16. No Broker. NICTD hereby represents and warrants that no brokers or third-party involved in the negotiation and execution of this Ground Lease is entitled, as a result of the actions of the respective party, to a commission or other fee resulting from the execution of this Ground Lease.

Section 17. Transfer to NICTD. To the extent provided in the Governance Agreement, upon the later of the termination of the Governance Agreement and the final and full payment of all IFA Bonds, this Ground Lease shall terminate.

Section 18. Title to Real Estate.

(a) NICTD shall cause a final, fully paid, leasehold title insurance policy to be issued for the benefit of RDA by no later than the date the IFA Bonds are to be issued by IFA. In the event NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities, then by no later than the date as of which construction of any such portion commences, NICTD shall cause (i) an endorsement to be issued to, and on substantially the same terms as, the leasehold title insurance policy referenced in the prior sentence (or an additional final, fully paid, leasehold title insurance policy to be issued on substantially the same terms as the leasehold title insurance policy referenced in the prior sentence) to identify and insure thereunder any such necessary increase in the real estate described in Exhibit A and (ii) a Supplemental Ground Lease to be entered into in substantially the form set forth in Exhibit B in respect of such Real Estate; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.

(b) NICTD represents and warrants that it has a good and indefeasible estate in fee simple to all of the Real Estate, subject only to Permitted Encumbrances.

Section 19. Defaults; Remedies.

(a) If there is any NICTD Event of Default (including any default in the observance of any other covenant, agreement or condition contained in this Ground Lease) (each, an "Event of Default"), RDA may proceed to protect and enforce its rights, either at law or in equity, by suit, action, mandamus or other proceedings, whether for specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy (as contained in the Governance Agreement as may relate to this Ground Lease and such Event of Default); *provided* that all such rights and remedies taken in respect of this Ground Lease and any such Event of Default shall only be undertaken and pursued by RDA in strict conformity with this Section and the requirements and limitations set forth in the Governance Agreement.

(b) Except for extensions of time resulting from a Force Majeure event that are allowed in the Governance Agreement, time is of the essence of each term and provision of this Ground Lease to be observed by NICTD hereunder.

(c) If RDA shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Ground Lease, NICTD may pursue a claim for specific performance. If RDA shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Ground Lease and if NICTD shall, as a consequence thereof, recover a money judgment against RDA and/or IFA, NICTD agrees that (i) it shall look solely to RDA's and IFA's right, title and interest in and to the Lease Premises (which shall not include any right to set-off related to any payment due to RDA or IFA as required by the Governance Agreement, the Development Agreement, this Ground Lease, the Underlying Lease, the Master Leases, the Operating Lease and/or any documents related thereto) for the collection of such judgment, (ii) it shall not look to any other assets of RDA and/or IFA in the levy, execution or other process for the satisfaction of NICTD's judgment, and (iii) it shall not enforce any execution or other process for the satisfaction of NICTD's judgment, unless such does not: (A) materially reduce the rental value of the Lease Premises; (B) adversely affect the Continuing Rent Obligation; or (C) materially and adversely affect any obligation that is required to be met by NICTD pursuant to applicable laws (including the Bond Act) and requirements of the Governance Agreement, the Development Agreement, this Ground Lease the Underlying Lease, the Master Leases, the Operating Lease and/or any documents related thereto.

(d) Neither party's failure or delay in exercising any of its rights or remedies or other provisions of this Ground Lease shall constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any default shall be deemed to be a waiver of any other default. RDA's receipt of less than the full amount due as herein provided shall not be construed to be other than a payment on account of such amount then due, nor shall any statement on NICTD's check or any letter accompanying NICTD's check be deemed an accord and satisfaction. No act or omission by RDA (or IFA) or their respective employees or agents during the term of this Ground Lease shall be deemed an acceptance of a surrender of the Lease Premises hereunder, and no agreement to accept such a surrender shall be valid unless in writing and signed by RDA and IFA.

(e) Notwithstanding anything herein, IFA may proceed to protect and enforce any rights or interests of RDA and IFA under this Ground Lease in its own name or on behalf of RDA in the name of RDA in its place and stead.

Section 20. Notices.

(a) All notices, certificates, requests or other communications required hereunder shall be sufficient only if given in writing, prior to the matter requiring notice and shall be deemed given (i) one (1) business day after being deposited for next day delivery; (ii) three (3) business days after mailing when mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) the same day if hand delivered (or if sent by both facsimile and email) during a business day, addressed as follows:

To RDA: Northwest Indiana Regional Development Authority  
9800 Connecticut Drive  
Crown Point, IN 46307  
Attention: President

With a Copy to: Ice Miller LLP  
One American Square 2900  
Indianapolis, IN 46282

To IFA: Indiana Finance Authority  
1 North Capitol, Suite 900  
Indianapolis, Indiana 46204  
Attention: Public Finance Director of the State of Indiana  
and General Counsel  
Facsimile (317) 232-6786 / Electronic mail (to  
DHuge@ifa.IN.gov; and ASeiwert@ifa.IN.gov)

To NICTD: Northern Indiana Commuter Transportation District  
33 East U.S. Highway 12  
Chesterton, Indiana 46304  
Attention: President and/or Chief Executive Officer

With a Copy to: Northern Indiana Commuter Transportation District  
33 E. US Highway 12  
Chesterton, IN 46304  
Attention: Office of General Counsel

(b) Any party hereunder may, by notice given hereunder, designate any further or different addressees to which subsequent notices, certificates, requests or other communications shall be sent.

Section 21. Construction of Covenants. All provisions contained herein shall be construed in accordance with the provisions of the Bond Act, the Governance Agreement and the Development Agreement and to the extent of any material inconsistencies between the covenants and agreements in this Ground Lease, the Governance Agreement, and the Development Agreement and the provisions of the Bond Act, the provisions of the Bond Act, then the Governance Agreement, then this Ground Lease, and then the Development Agreement, shall be deemed to be controlling and binding upon the parties.

Section 22. Supplemental Ground Leases. RDA and NICTD may, from time to time hereafter, enter into one or more Supplemental Ground Leases, each of which: (a) shall provide that all covenants contained in this Ground Lease shall be unitary and include all parts of the Lease Premises, whether leased pursuant to this original Ground Lease or pursuant to any Supplemental Ground Lease (*provided* that the foregoing shall not limit or restrict the parties from having differing covenants and obligations applicable to any Supplemental Ground Leases related to portions of the Rail Project NICTD proposes to be constructed that are not within the existing boundaries of the Facilities); and (b) may contain such other covenants and agreements as the parties thereto agree upon.

Section 23. No Personal Liability. No recourse shall be had for any payment due under this Ground Lease or for any claim based thereon or upon any obligation, covenant or agreement in this Ground Lease contained against any past, present or future member, officer, employee, agent or official of IFA, RDA or NICTD, or any successor thereof, either directly or through IFA, RDA or NICTD, or any successor thereof, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability for any such person is hereby expressly waived and released as a condition of and consideration for the execution of this Ground Lease and issuance of the IFA Bonds.

Section 24. Successors or Assigns; Use Restrictions.

(a) All covenants of this Ground Lease, whether by RDA or NICTD, shall inure to the benefit of and be binding upon the permitted successors and assigns of the respective parties hereto. This Ground Lease shall not be assigned by NICTD without the prior written consent of RDA and IFA, and in such event the assignor shall not be relieved of its obligations hereunder unless permitted by RDA and IFA. This Ground Lease may be assigned by RDA to IFA without the prior written consent of NICTD, as and to the extent permitted by the Bond Act. Any assignment in contravention of this Section shall be null and void *ab initio*.

(b) Notwithstanding any other provision of this Ground Lease to the contrary, NICTD covenants that it: (a) will not use or permit the Facilities or any portion thereof for any private business use within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended from time to time, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, and (b) will comply with Section 148(f) of the Internal Revenue Code of 1986, as amended from time to time. Any agreement entered into by NICTD in violation of this Section 24 shall be of no force or effect and shall not convey any rights or impose any obligation in respect to it, at law or in equity.

(c) Requests for consent to private business use shall be sent in writing by NICTD to IFA and RDA. Each such request shall include a final draft of the proposed conveyance, lease, sublease, management or incentive payment contract, license or other agreement that may give rise to such private business use, together with a description of the timing and the rationale for entering into such agreement (the "Proposed Private Business Use"). IFA and RDA shall conduct their review and approve or reject, in writing, such request within 30 days of receipt. If no response is made to a request for consent to private business use within 30 days of receipt, then NICTD shall provide additional written notice to IFA and RDA that the Proposed Private Business Use will be deemed to be approved. If no response to this additional written notice is

received within three business days of receipt of the additional written notice by IFA and RDA, then the request shall be deemed approved. In the event a request for consent to private business use is deemed approved, NICTD shall have the right to proceed as though consent to the Proposed Private Business Use was expressly provided by IFA and RDA. In any event, upon the execution and delivery by NICTD of any such agreement, NICTD shall provide IFA and RDA a copy of such executed agreement within 10 business days of the execution thereof.

Section 25. Validity. All terms, covenants and conditions contained in this Ground Lease shall include all parts of the Facilities, whether leased pursuant to the original Ground Lease or pursuant to any Supplemental Ground Lease thereto.

Section 26. Severability; Complete Agreement; Counterparts; Survival of Terms; Governing Law; Etc.

(a) All the covenants, agreements, terms and conditions required under the laws of the State, including the Bond Act, to be included in any lease entered into under Indiana Code 5-1.3-5 are incorporated herein by this reference.

(b) In case any section or provision of this Ground Lease, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Ground Lease, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Ground Lease or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Ground Lease, which shall be construed and enforced as if that illegal, invalid or inoperable portion were not contained herein. Any such illegality, invalidity or inoperability of any application thereof shall not affect any legal, valid and operable application thereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

(c) This Ground Lease represents the entire agreement between RDA and NICTD covering everything agreed upon or understood in the creation of the estate created by this Ground Lease and related transactional matters; *provided*, however, that the parties contemplate and agree that the provisions of the Governance Agreement, the Development Agreement, the other Leases and/or any documents related thereto contain related undertakings and such shall be given their full meaning and effect. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Ground Lease except by a written agreement executed by RDA and NICTD.

(d) The parties each acknowledge that the terms and conditions of this Ground Lease have been the subject of active and complete negotiations represented by competent professional counsel and advisors, and that such terms and conditions should not be construed in favor of or against any party by reason of the extent to which any party or its professional counsel and advisors participated in the preparation of this Ground Lease.

(e) This Ground Lease may be executed in duplicate counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

(f) The covenants and obligations under Sections 5, 12, 14, 15, 19, and 23 hereof shall survive the expiration or earlier termination of this Ground Lease.

(g) This Ground Lease shall be construed according to, and subject to, the laws of the State.

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IN WITNESS WHEREOF, the parties hereto have caused this Ground Lease to be executed for and on their behalf as of the day and year first hereinabove written.

**"NICTD"**

**NORTHERN INDIANA COMMUTER  
TRANSPORTATION DISTRICT, AS  
LESSOR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northern Indiana Commuter Transportation District ("NICTD"), and acknowledged the execution of the foregoing Ground Lease Agreement (West Lake Project) for and on behalf of NICTD.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)  
Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

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*June 20, 2019 draft*

*This instrument prepared by: Philip C Genetos, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, IN 46282.*

*I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Philip C Genetos*

**EXHIBIT A**

**LEGAL DESCRIPTION AND MAP OF THE REAL ESTATE**

**Map of the Real Estate.** Real property in \_\_\_\_\_  
\_\_\_\_\_, as depicted as follows:

[End of Exhibit A]

**EXHIBIT B**  
**FORM OF**  
**SUPPLEMENTAL GROUND LEASE AGREEMENT (WEST LAKE PROJECT)**  
**BETWEEN**  
**NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT**  
**AND**  
**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY**

SUPPLEMENTAL GROUND LEASE AGREEMENT (WEST LAKE PROJECT)  
BETWEEN  
NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT  
AND  
NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

This SUPPLEMENTAL GROUND LEASE AGREEMENT (WEST LAKE PROJECT) (this "Supplemental Ground Lease"), entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT, a commuter transportation district and a municipal corporation formed pursuant to Indiana Code 8-5-15, as supplemented and amended from time to time ("NICTD"), and the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, a separate body corporate and politic formed pursuant to Indiana Code 36-7, as supplemented and amended from time to time ("RDA").

WITNESSETH:

WHEREAS, NICTD entered into a Ground Lease Agreement (West Lake Project) with RDA dated as of \_\_\_\_\_ 1, 20\_\_ (the "Ground Lease"); and

WHEREAS, all terms not otherwise defined in this Supplemental Ground Lease shall have the meanings ascribed to them in the Ground Lease; and

[WHEREAS, it is provided in the Ground Lease that after the Commencement Date, for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed or taken, so as to render such portion unavailable for use by RDA, or shall for any other reason become unavailable for use by RDA, NICTD may add additional Lease Premises to the Ground Lease pursuant to a Supplemental Ground Lease so that RDA may lease such additional Lease Premises to NICTD pursuant to a supplement to the Operating Lease; provided that such additional Lease Premises are also added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Ground Lease that in the event NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities, then by no later than the date as of which construction of any such portions commences, NICTD shall cause a Supplemental Ground Lease to be entered into for the purpose of adding to the Real Estate the pertinent real estate on which such portions of the Rail Project shall be located; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Ground Lease that when the Rail Improvements are complete and ready for use as part of the Rail Project, the parties shall revise and increase the real estate described in Exhibit A to the Ground Lease, if necessary to reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part of the Rail Project have been constructed; provided that such additional Real Estate is also added to the

Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Ground Lease that RDA and NICTD may enter into one or more Supplemental Ground Leases, each of which: (1) shall provide that all covenants contained in the Ground Lease shall be unitary and include all parts of the Lease Premises, whether leased pursuant to the Ground Lease or pursuant to any Supplemental Ground Lease (*provided* that the foregoing shall not limit or restrict the parties from having differing covenants and obligations applicable to any Supplemental Ground Leases related to portions of the Rail Project NICTD proposes to be constructed that are not within the existing boundaries of the Facilities); and (2) may contain such other covenants and agreements as the parties thereto agree upon.]

NOW, THEREFORE, IT IS HEREBY AGREED, CERTIFIED AND STIPULATED by the undersigned as follows:

[Section 1. Addition to Real Estate After Commencement Date. Certain portions of the Lease Premises have been damaged or destroyed, thereby rendering such portions unavailable for use by RDA, or have otherwise become unavailable for use by RDA. NICTD has determined to add additional Lease Premises to the Ground Lease pursuant to this Supplemental Ground Lease. Therefore, the Lease Premises set forth in Exhibit A to the Ground Lease shall be hereafter amended to read as set forth in Appendix I attached hereto, so that RDA may lease such additional Lease Premises to NICTD pursuant to a supplement to the Operating Lease, thereby resulting in no interruption in the lease rentals payable by NICTD to RDA pursuant to the Operating Lease. Such additional Lease Premises are also being added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.]

[Section   . Addition to Real Estate Prior to Construction. NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities set forth in Exhibit A to the Ground Lease. Therefore, the boundaries of the Facilities set forth in Exhibit A to the Ground Lease shall be hereafter amended to read as set forth in Appendix I attached hereto, which revised boundaries shall include the pertinent real estate on which such portions of the Rail Project shall be located. Such additional Real Estate is also being added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.]

[Section   . Addition to Real Estate After Construction. Certain Rail Improvements are now complete and ready for use as part of the Rail Project, and it is now necessary to revise or increase the real estate described in Exhibit A to the Ground Lease, because such Exhibit A does not reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part of the Rail Project have been constructed. Therefore, for such purpose, Exhibit A to the Ground Lease shall be hereafter amended to read as set forth in Appendix I attached hereto. Such additional Real Estate is also being added to the Underlying Lease, one or more of the Master Leases, and the Operating Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.]

Section \_. All covenants contained in the Ground Lease, including this Supplemental Ground Lease, shall be unitary and include all parts of the Lease Premises, whether leased pursuant to the Ground Lease or pursuant to any Supplemental Ground Lease.

[REMAINDER OF PAGE LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have caused this Supplemental Ground Lease to be executed for and on their behalf as of the day and year first above written.

"NICTD"

NORTHERN INDIANA COMMUTER  
TRANSPORTATION DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

"RDA"

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This instrument prepared by: \_\_\_\_\_

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northern Indiana Commuter Transportation District ("NICTD"), and acknowledged the execution of the foregoing Supplemental Ground Lease Agreement (West Lake Project) for and on behalf of NICTD.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

[REMAINDER OF PAGE LEFT BLANK]

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northwest Indiana Regional Development Authority ("RDA"), and acknowledged the execution of the foregoing Supplemental Ground Lease Agreement (West Lake Project) for and on behalf of RDA.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

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[APPENDIX I

LEGAL DESCRIPTION AND MAP OF THE REAL ESTATE]

**UNDERLYING LEASE AGREEMENT (WEST LAKE PROJECT)**

**by and between**

**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY**

**and**

**INDIANA FINANCE AUTHORITY**

**Dated as of [\_\_\_\_\_], 20\_\_**

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**UNDERLYING LEASE AGREEMENT (WEST LAKE PROJECT)**

**by and between**

**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY**

**and**

**INDIANA FINANCE AUTHORITY**

This UNDERLYING LEASE AGREEMENT (WEST LAKE PROJECT) made and entered into as of [\_\_\_\_\_], 20\_\_ (this "Agreement"), by and between the Northwest Indiana Regional Development Authority ("RDA" or the "Lessor"), a separate body corporate and politic formed pursuant to Indiana Code 36-7.5 (the "RDA Act"), and the Indiana Finance Authority ("IFA" or the "Lessee"), a body politic and corporate duly organized and validly existing under and pursuant to Indiana Code 5-1.2 (the "IFA Act");

**WITNESSETH:**

WHEREAS, the Northern Indiana Commuter Transportation District ("NICTD"), a commuter transportation district and a municipal corporation formed pursuant to Indiana Code 8-5-15 (the "NICTD Act"), and RDA have entered into a ground lease (the "Ground Lease") pursuant to which NICTD has leased to RDA all right, title and interests of NICTD in and to certain property described in the Ground Lease (the "Lease Premises"), including any property acquired by NICTD from time to time and leased to RDA as provided in the Ground Lease, on such terms and conditions as prescribed therein;

WHEREAS, the purpose of this Agreement is to lease from RDA to IFA all right, title and interests of the RDA in and to the Lease Premises leased to RDA under the Ground Lease;

WHEREAS, as a result of this Agreement, IFA will be authorized to finance through the issuance of bonds, notes or other obligations pursuant to Indiana Code 5-1.3, the development of the Rail Project (as defined herein) through a lease financing structure pursuant to which IFA shall, pursuant to one or more Master Leases (as defined herein), lease to RDA the Rail Project as constructed and when completed;

WHEREAS, as to be required by the Master Leases, RDA shall then lease the Rail Project to NICTD pursuant to the Operating Lease (as defined herein) so that NICTD will be obligated to construct, acquire, develop, operate and maintain the Rail Project in the manner provided in the Governance Agreement [and the Development Agreement]; and

WHEREAS, the Lessor and the Lessee have agreed to record a Memorandum of Lease contemporaneous with the execution of this Agreement;

In consideration of the mutual covenants herein set forth, the parties agree as follows:

ARTICLE I

DEFINITIONS AND GENERAL PROVISIONS

Section 1.01. Definitions. The following words and terms, as used in this Agreement or in any Supplemental Agreement or other amendment or supplement hereto, shall have the following meanings unless otherwise provided for in this Agreement or such Supplemental Agreement or other amendment or supplement, unless the context or use clearly indicates another or different meaning or intent:

"Agreement" shall mean this Underlying Lease Agreement (West Lake Project) as from time to time amended or supplemented by any Supplemental Agreement and Supplemental Memorandum of Lease or other amendment or supplement hereto.

"Fiscal Year" shall mean the twelve-month period commencing on July 1 of each year and ending on the succeeding June 30, or such other fiscal year of IFA as may be mandated by law.

"Governance Agreement" shall mean the Governance Agreement dated as of August 1, 2018, by and between NICTD, the RDA and the IFA, as from time to time amended or supplemented in accordance with its terms.

"Ground Lease" means the Ground Lease Agreement (West Lake Project), dated as of [\_\_\_\_\_] from NICTD to RDA of the Lease Premises, which Lease Premises shall then be leased by RDA to IFA pursuant to this Agreement.

"IFA Bond Act" shall mean Indiana Code 5-1.3, as amended or supplemented, or any successor thereto.

"Lease Premises" shall mean all property described in Exhibit B attached hereto, including without limitation, any and all Lease Premises leased to RDA by NICTD under the Ground Lease.

"Lessee" shall mean IFA.

"Lessor" shall mean RDA.

"Master Lease" or "Master Leases" shall mean the one or more Master Leases entered into or to be entered into from IFA to RDA that provides for financing the Rail Project through lease rental payments from RDA to IFA and obligates RDA to cause NICTD, pursuant to the Operating Lease, to acquire, construct, develop, operate and maintain the Rail Project in the manner provided by the Governance Agreement [and Development Agreement].

"Memorandum of Lease" shall mean the Memorandum of Lease, a form of which is set forth in Exhibit C attached hereto, which is to be recorded contemporaneous with the execution of this Agreement for the purpose of identifying the Lease Premises.

"Operating Lease" shall mean the lease, dated as of [\_\_\_\_] from RDA to NICTD of the Rail Project Property, including the Rail Project Property leased to RDA by IFA pursuant to the Master Leases, pursuant to which Operating Lease NICTD shall agree to acquire, construct, develop, operate and maintain the Rail Project in the manner provided by the Governance Agreement [and Development Agreement].

"Rail Project" shall mean the project described in Exhibit A attached hereto (the "West Lake Corridor Project").

"Rail Improvements" shall mean the existing improvements located on the Real Estate, together with any new improvements constructed (or placed for use) on the Real Estate, whether as part of the Rail Project or otherwise.

"Rail Project Property" shall mean all real and personal property interests, including, but not limited to, the Lease Premises, the Rail Improvements, and such easements, licenses, leases, or property rights, in whatever form reasonably necessary to construct and operate the Rail Project, but not including NICTD rolling stock, except to the extent any costs for rolling stock are included in the applicable Cost Budget), as the Rail Project is identified and described in Exhibit A attached hereto.

"Real Estate" means the real property described in Exhibit B attached hereto, as the same may be amended or modified in the manner provided herein.

"State" shall mean the State of Indiana.

"Supplemental Agreement" shall mean any agreement supplemental or amendatory of this Agreement entered into in accordance with Article III.

"Supplemental Memorandum of Lease" shall mean each Supplemental Memorandum of Lease recorded in connection with the addition of Lease Premises in the manner provided in Section 2.04 hereof.

Section 1.02. Incorporation by Reference. The provisions of the Ground Lease, Master Leases, Operating Lease and Governance Agreement [and Development Agreement] are hereby incorporated herein by reference.

Section 1.03. Interpretations. Unless the context indicates otherwise, words importing the singular number shall include the plural number and words importing the plural number shall include the singular number. The terms "hereof," "herein," "hereby," "hereto," "hereunder" and similar terms mean this Agreement.

ARTICLE II

LEASE AND MAINTENANCE OF THE RAIL PROJECT PROPERTY

Section 2.01. Lease of the Rail Project Property. In consideration of the rents, covenants and agreements contained herein, the Lessor does hereby demise and lease to the Lessee, and the Lessee does hereby rent and lease from the Lessor, the Lease Premises.

Section 2.02. Term of Lease. The term of this Agreement shall commence on the date hereof and shall terminate on \_\_\_\_\_; provided the term shall end earlier or later than such date, in the event the Governance Agreement is terminated and all bonds, notes or other financing provided by IFA for the Rail Project are fully paid or their payment is fully provided for, in which case, the term shall end on such date. Upon the expiration or termination of this Agreement, the ownership of all Lease Premises and Rail Project Property shall revert to NICTD.

Section 2.03. Operation and Maintenance. RDA shall cause NICTD, pursuant to the Ground Lease and the Operating Lease, to operate and maintain the Rail Project Property during the term of this Agreement in an efficient and economical manner and to maintain the same in good repair and sound operating condition and make all necessary repairs, renewals, replacements and improvements thereto. RDA shall cause NICTD, pursuant to the Ground Lease and the Operating Lease, to comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to NICTD, RDA and the Rail Project Property. RDA shall cause NICTD, pursuant to the Governance Agreement, the Ground Lease and the Operating Lease, to adopt and keep in force reasonable rules and regulations governing the use of the Rail Project Property and the operation thereof, and enforce such rules and regulations.

Section 2.04. Additional Lease Premises. Whenever, pursuant to the Ground Lease, NICTD leases to RDA additional Lease Premises by execution of a supplemental agreement or memorandum to the Ground Lease, the Lease Premises shall become, by the recording of a Supplemental Memorandum of Lease, the same Lease Premises that are leased to RDA by NICTD under the Ground Lease.

ARTICLE III

RENTS

Section 3.01. Payment. The IFA shall pay, in arrears, without relief from valuation or appraisal laws and without a defense of set-off, counterclaim or recoupment, an annual rental for the Lease Premises, in an amount equal to One Dollar, payable to the Lessor during the term hereof on the first day of each Fiscal Year after the date hereof.

Section 3.02. Supplemental Agreements. The Lessor and the Lessee may, on the date hereof and from time to time thereafter, enter into one or more Supplemental Agreements which shall contain such covenants and agreements as the parties agree upon.

ARTICLE IV

MISCELLANEOUS

Section 4.01. Power to Agree. The Lessor and the Lessee each covenant to the other that the execution and delivery of this Agreement has been duly authorized by all necessary action, and that this Agreement has been duly executed and delivered, and constitutes a legal, valid and binding agreement in accordance with its terms and provisions.

Section 4.02. Effectiveness. This Agreement shall be effective from and after the date hereof, through the date on which this Agreement shall terminate in accordance with Section 2.02.

Section 4.03. Notices. All notices required or authorized to be given pursuant to this Agreement shall be in writing and shall be served personally or sent by certified mail to the main office of the party or parties to be notified, and the effective date thereof shall be the date of delivery, if served personally, or the date it is deposited in the mail, if mailed.

Section 4.04. Severability. In case any section or provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, that illegality, invalidity or inoperability shall not affect the remainder hereof or any other section or provision of this Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, which shall be construed and enforced as if that illegal, invalid or inoperable portion were not contained herein. Any such illegality, invalidity or inoperability of any application shall not affect any legal, valid and operable application, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 4.05. Table of Contents; Captions. The Table of Contents included in this Agreement and the captions included throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 4.06. Governing Law. This Agreement shall be construed according to, and subject to, the laws of the State.

Section 4.07. Successors and Assigns. The rights and obligations of either party under this Agreement shall not be assignable by such party without the prior written consent of the other party. This Agreement shall inure to the benefit and shall be binding upon the respective successors and permitted assigns of the parties. Nothing herein expressed or implied is intended to confer upon any person, other than the parties or their respective successors or permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

**NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**INDIANA FINANCE AUTHORITY**

By: \_\_\_\_\_  
Christopher R. Johnston, Chair

Attest:

\_\_\_\_\_  
Dan Huges, Public Finance Director of the  
State of Indiana

Approved as to form and substance:

STATE BUDGET AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_, State Budget Director

Approved as to form and legality:

ATTORNEY GENERAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **EXHIBIT A**

### **WEST LAKE CORRIDOR PROJECT**

The West Lake Corridor Project is an approximately eight-mile southern extension of the existing NICTD South Shore Line (SSL) between Dyer and Hammond, Indiana. Traveling north from the southern terminus near Main Street at the Munster/Dyer municipal boundary, the West Lake Project would include new track operating at-grade on a separate right-of-way (to be acquired) adjacent to the CSX Transportation (CSX) Monon Subdivision freight line in Dyer and Munster. The West Lake Project alignment would be elevated from 45<sup>th</sup> Street to the Canadian National Railway (CN) Elsdon Subdivision freight line at the Maynard Junction. North of the CN, the West Lake Project alignment would return to grade and join with the publicly owned former Monon Railroad corridor in Munster and Hammond, Indiana, and continue north. The West Lake Project would relocate the existing Monon Trail pedestrian bridge crossing over the Little Calumet River and build a new rail bridge at the location of the former Monon Railroad Bridge. The West Lake Project alignment would cross under US 80/94 and continue north on the former Monon Railroad corridor until Sibley Street. From Douglas Street north, the West Lake Project would be elevated over all streets and railroads, using a combination of retaining walls, elevated structures, and bridges.

The West Lake Project would end just east of the Indiana Harbor Belt at the state line, where it would connect with the SSL. Trains would operate on the existing Metra Electric District (MED) line for the final 14 miles, terminating at Millennium Station in downtown Chicago. Station locations for the West Lake Project are Munster/Dyer Main Street, Munster Ridge Road, South Hammond, and Hammond Gateway. The four new stations along the alignment—two in Munster and two in Hammond—would have high-level station platforms proposed to be 720 feet long and approximately 10 feet wide. They would typically have three ramps: one at both ends and a third in the middle, depending on access needs based on the surrounding area. Each station stop would have warming shelters, a depot (except at the Munster Ridge Road Station), parking facilities, benches, trash receptacles, bicycle racks, and other site amenities.

Additional project elements include a maintenance facility with a layover yard just south of the Hammond Gateway Station and west of Sheffield Avenue, and three traction power substations (TPSSs) powering the overhead catenary system at the following locations: the vehicle maintenance and storage facility site, the South Hammond Station parking lot, and the Munster/Dyer Main Street Station. The TPSSs would be enclosed to secure installations housing electrical equipment and controls. The TPSSs would feed an overhead catenary system that powers the vehicles. The Monon Trail, an existing pedestrian/bicycle route, would be preserved as part of the West Lake Corridor Project.

**EXHIBIT B**

**LEASE PREMISES**

(See attached)

**EXHIBIT C**

**FORM OF MEMORANDUM OF LEASE**

**STATE APPROPRIATION MASTER LEASE AGREEMENT (WEST LAKE PROJECT)**

**by and between**

**INDIANA FINANCE AUTHORITY,  
as Lessor**

**and**

**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY,  
as Lessee**

**Dated as of \_\_\_\_\_ 1, 20\_\_**

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**STATE APPROPRIATION MASTER LEASE AGREEMENT (WEST LAKE PROJECT)**

This STATE APPROPRIATION MASTER LEASE AGREEMENT (WEST LAKE PROJECT) made and entered into as of the first day of \_\_\_\_\_, 20\_\_ (this "Agreement"), by and between the INDIANA FINANCE AUTHORITY, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State of Indiana (the "IFA"), pursuant to Indiana Code 5-1.2, and the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, duly created and existing under and by virtue of Indiana Code 36-7.5 (the "RDA");

**WITNESSETH:**

WHEREAS, this Agreement is designed to provide a master leasing structure with respect to various portions of the Rail Project defined herein that relate to bonds issued by IFA for the Rail Project and are payable from the Funding Source set forth herein (the "Related IFA Bonds");

WHEREAS, as additional series of Related IFA Bonds are authorized to provide additional funding for the Rail Project, IFA and RDA shall describe the Additional Project to be funded from that specific series of Related IFA Bonds and the lease rentals payable by RDA with respect thereto in a Supplemental Agreement; and

WHEREAS, it is the parties' intent that the terms within Indiana Code 5-1.3-5-2(a) are all contained herein and fulfilled;

In consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

**ARTICLE I**

**DEFINITIONS AND GENERAL PROVISIONS**

Section 1.01. Definitions. The following words and terms as used in this Agreement or in any Supplemental Agreement or other amendment or supplement hereto shall have the following meanings unless provided for in this Agreement or in any Supplemental Agreement or other amendment or supplement hereto, unless the context or use clearly indicates another or different meaning or intent:

"Act" shall mean Indiana Code 5-1.3, as amended or supplemented, or any successor thereto.

"Additional Lease Premises" shall mean any additional real property that is acquired for the Rail Project or an Additional Project with the proceeds of any series of Related IFA Bonds or incorporated therein in connection with any series of Related IFA Bonds, which is added to this Agreement pursuant to the terms set forth in Section 3.05.

"Additional Project" shall mean an additional portion of the Rail Project that becomes part of the Lease Premises in the manner provided in Section 3.06.

"Agreement" shall mean this State Appropriation Master Lease Agreement (West Lake Project) as from time to time amended or supplemented by any Supplemental Agreement or other amendment or supplement hereto, including a Supplemental Memorandum of Lease.

"Authorized Officer of IFA" shall mean the Chair of IFA or the Public Finance Director of the State of Indiana and, with reference to any act or document, also means any other person authorized by a resolution of IFA to perform such act or to sign such document.

"Authorized Officer of RDA" shall mean the Chair or the Chief Executive Officer of RDA and, with reference to any act or document, also means any other person authorized by a resolution of RDA to perform such act or to sign such document.

"Available Portion" shall mean, collectively, the portions of the Lease Premises that are available for use.

"Biennium" shall mean the biennium used for State budgetary and appropriation purposes.

"Bond Trustee" shall mean the trustee bank serving as Trustee for the Related IFA Bonds.

"Commencement Date" for any Lease Premises or any portion thereof shall mean the date on which a Completion Certificate for such Lease Premises or such portion thereof is accepted by an Authorized Officer of RDA.

"Completion Certificate" for any Lease Premises or any portion thereof shall mean a certificate (a) executed by an Authorized Officer of IFA certifying that such Lease Premises or such portion thereof is available for use by RDA and (b) accepted by an Authorized Officer of RDA acknowledging that such Lease Premises or such portion thereof is available for use by RDA.

"Construction" shall mean constructing, acquiring, renovating, rehabilitating, reconstructing, improving, extending or equipping the Rail Project or the Lease Premises or any portion thereof.

"Deposit Trustee" shall mean the trustee bank acting as the Deposit Trustee under the Revenue Trust Fund Agreement.

"Development Agreement" shall mean any development agreement entered into by NICTD, RDA and IFA for the purpose of governing the completion of the Rail Project in a manner consistent with and as contemplated by the Governance Agreement.

"Effective Date" shall mean the date of execution and delivery of this Agreement, which is \_\_\_\_\_, 20\_\_.

"Fiscal Year" shall mean the twelve-month period commencing on July 1 of each year and ending on the succeeding June 30, or such other fiscal year of the State as may be mandated by law.

"Funded Interest Date" shall mean the date until which the proceeds of a series of Related IFA Bonds are expected to pay the interest thereon. The Funded Interest Date for that portion of the Rail Project being financed with the initial series of the Related IFA Bonds is \_\_\_\_\_, 20\_\_.

"Funding Source" shall mean the Biennium appropriations contemplated to be made by the Indiana General Assembly to RDA to pay lease rentals on the Related IFA Bonds.

"Governance Agreement" shall mean the Governance Agreement dated as of August 1, 2018, by and among NICTD, RDA and IFA, as from time to time amended or supplemented in accordance with its terms.

"Ground Lease" shall mean the Ground Lease Agreement (West Lake Project), dated as of \_\_\_\_\_ 1, 20\_\_, between NICTD, as lessor, and RDA, as lessee.

"IFA" shall mean the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State, pursuant to Indiana Code 5-1.2, as supplemented and amended.

"IFA Appropriations Revenue Account" shall mean the account of such name held under Section 5(a)(i) of the Revenue Trust Fund Agreement.

"Initial Term" shall mean the period of time commencing on the date hereof and ending on June 30, 2021.

"Lease Premises" shall mean the property described in Exhibit B hereto from time to time as Supplemental Agreements specify the portion of the Rail Project financed with Related IFA Bonds as provided in Section 3.06 hereof, including without limitation, all Rail Project Property related thereto and any Additional Lease Premises included in the Lease Premises by reason of Section 3.05 hereof.

"Memorandum" shall mean the Memorandum of Lease attached hereto as Exhibit C to be recorded contemporaneously with the execution of this Agreement with respect to identifying the Lease Premises.

"NICTD" shall mean the Northern Indiana Commuter Transportation District established under Indiana Code 8-5-15.

"Operating Lease" shall mean the Operating Lease Agreement (West Lake Project), dated as of \_\_\_\_\_ 1, 20\_\_, between RDA, as lessor, and NICTD, as lessee.

"Projected Commencement Date" for any Additional Project shall mean the projected Commencement Date for such Additional Project, as set forth in the Supplemental Agreement covering such Additional Project.

"Rail Project" shall mean the West Lake Corridor Project described in Exhibit A to the Underlying Lease.

"Rail Project Property" shall mean all real and personal property interests, including, but not limited to, the Lease Premises, each Additional Project and such easements, licenses, leases, or property rights, in whatever form reasonably necessary to construct and operate the Rail Project, but not including NICTD rolling stock, except to the extent any costs for rolling stock are included in the applicable Cost Budget (as defined in the Governance Agreement), as the Rail Project is identified and described in Exhibit A to the Underlying Lease.

"RDA" shall mean the Northwest Indiana Regional Development Authority, organized and existing under Indiana Code 36-7.5.

"Related IFA Bonds" shall mean the bonds issued by IFA to finance the Rail Project, including any Additional Project, which are secured by the rental payments due under this Agreement. The initial series of Related IFA Bonds are the Indiana Finance Authority Lease State Appropriation Bonds (West Lake Project), Series 20\_\_ \_\_.

"Revenue Trust Fund Agreement" shall mean the Revenue Trust Fund Agreement, dated as of \_\_\_\_\_ 1, 2019, entered into by and among RDA, IFA, NICTD, the Bond Trustee, and the Deposit Trustee.

"State" shall mean the State of Indiana.

"Supplemental Agreement" shall mean any agreement supplemental or amendatory of this Agreement entered into in accordance with Article IV, including each Supplemental Agreement that describes an Additional Project to be included in the Lease Premises hereunder as provided in Section 3.06 hereof.

"Supplemental Memorandum of Lease" shall mean each Supplemental Memorandum of Lease recorded in connection with the addition of Additional Lease Premises in the manner provided in Section 3.05 hereof.

"Underlying Lease" shall mean the Underlying Lease Agreement (West Lake Project), dated as of \_\_\_\_\_ 1, 20\_\_ between RDA and IFA as from time to time amended or supplemented in accordance with its terms.

Section 1.02. Interpretations. Unless the context indicates otherwise, words importing the singular number shall include the plural number and words importing the plural number shall include the singular number. The terms "hereof," "herein," "hereby," "hereto," "hereunder" and similar terms mean this Agreement.

Section 1.03. Not Indebtedness of State. It is expressly understood and agreed by the parties hereto that this Agreement does not constitute an indebtedness of the State within the

meaning or application of any constitutional provision or limitation, or a pledge of the faith or credit of the State.

Section 1.04. Not Indebtedness of RDA. It is expressly understood and agreed by the parties hereto that this Agreement does not constitute an indebtedness of RDA within the meaning or application of any constitutional provision or limitation, or a pledge of the faith or credit of RDA from the appropriations received. The obligations of RDA are limited solely to the funds from the appropriations.

## ARTICLE II

### CONSTRUCTION OF THE RAIL PROJECT

Section 2.01. Construction of the Rail Project. IFA and RDA represent that the Rail Project has been or will be constructed in accordance with the Governance Agreement, any Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable plans and specifications therefor.

## ARTICLE III

### LEASE AND MAINTENANCE OF LEASE PREMISES

Section 3.01. Lease of Lease Premises. In consideration of the rents, covenants and agreements contained herein, IFA does hereby demise and lease to RDA, and RDA does hereby rent and lease from IFA, the Lease Premises from and after the Effective Date for such Lease Premises. IFA and RDA shall file and record a Supplemental Memorandum of Lease covering any Additional Lease Premises as provided in Section 3.05 and any Supplemental Agreement adding any Additional Project as provided in Section 3.06 hereof.

#### Section 3.02. Term of Lease.

(a) The initial term of this Agreement shall be the Initial Term. This Agreement shall terminate upon the occurrence of the first of the following events:

(i) on June 30, 2021, or if this Agreement shall have been extended by IFA and RDA in accordance with this Section 3.02, on the last day of any Biennium in which notice of nonextension is given in accordance with this Section 3.02; or

(ii) on the latter of the first day for which funds have not been appropriated or the first day on which funds are not available to RDA or IFA to pay when due any amount payable by RDA under this Agreement or by IFA under the Act; or

(iii) Upon receipt of notice from IFA to RDA that all Related IFA Bonds have been paid in full and all other obligations and lease rentals due to IFA hereunder or under the Governance Agreement with respect to the Rail Project have been paid in full; or

(iv) the termination of this Agreement by IFA pursuant to Section 6.02;  
or

(v) the termination of the Underlying Lease.

(b) During the Initial Term, IFA and RDA shall have the right to extend the term of this Agreement from Biennium to Biennium, with the extensions not to exceed a lease term of 40 years from the Effective Date. IFA and RDA shall be deemed to have exercised such right to extend the term of this Agreement and this Agreement shall be extended for each successive Biennium, unless either IFA or RDA delivers written notice of nonextension to the other party hereto not less than six months prior to the last day of any Biennium, in which event this Agreement shall terminate on the last day of such Biennium.

Section 3.03. Operation and Maintenance. RDA shall cause NICTD at all times, in accordance with its then current practices, to operate and maintain the Lease Premises during the Initial Term of this Agreement and during any extensions thereof in an efficient and economical manner, as required by the Governance Agreement, and in accordance with its then current practices, to maintain the Lease Premises in good repair and sound operating condition and to make all necessary repairs, renewals, replacements and improvements thereto, all at the expense of NICTD, except that IFA shall maintain insurance on the Lease Premises in accordance with Section 7.04 at its expense. RDA shall cause NICTD to comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to NICTD and the Lease Premises. RDA shall cause NICTD to adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the operation thereof, and shall enforce such rules and regulations. RDA and IFA shall cause NICTD to comply with the foregoing requirements through the operation of the covenants and agreements of NICTD contained in the Governance Agreement, at which time RDA shall also cause NICTD to comply with the foregoing requirements through the operation of the covenants and agreements of NICTD contained in the Ground Lease and the Operating Lease.

Section 3.04. Alterations or Modifications of the Lease Premises. RDA shall not, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, make or cause to be made or permit NICTD to make or cause to be made, any alteration, modification, addition or improvement to all or any portion of the Lease Premises, which alteration, modification, addition or improvement materially impairs the value of the Lease Premises, unless such alteration, modification, addition or improvement is, in the opinion of NICTD, as permitted by the Governance Agreement or as is necessary or advisable for the safety of the public.

Section 3.05. Additional Lease Premises. In the event Additional Lease Premises are added to the property leased by RDA to IFA pursuant to the Underlying Lease, such Additional Lease Premises shall immediately without further action become part of the Lease Premises subject to this Agreement upon the recordation of a Supplemental Memorandum of Lease executed by IFA and RDA in the offices of the Recorder of Lake County, Indiana.

Section 3.06. Additional Project. IFA and RDA contemplate that the Project may be funded in part by the issuance of an additional series of Related IFA Bonds from time to time to finance an Additional Project that constitutes a part of the Rail Project. In that event, IFA and RDA shall execute and deliver a Supplemental Agreement at such time to describe the Additional Project, provide for the Construction of such Additional Project and specify the rent due from RDA for such Additional Project.

## ARTICLE IV

### RENTS

Section 4.01. Timing for Payment. Subject to Sections 4.03 and 4.04 hereof, after the Funded Interest Date, RDA shall pay, in arrears, solely from the Funding Source, without relief from valuation or appraisal laws and without a defense of set-off, counterclaim or recoupment, a monthly rental for the Lease Premises or any portions thereof available for use, in an amount equal, in accordance with Indiana Code 5-1.3-5-2(a)(4), to the aggregate monthly rental payments set forth in the Supplemental Agreements, to IFA by general transfer of funds from an account of RDA or from the IFA Appropriations Revenue Account to such account as IFA may from time to time specify, so as to assure immediately available funds in such account on or before the first day of each month succeeding those months during which the Lease Premises or such portions thereof were actually used or available for use by RDA pursuant to this Agreement (provided that if the first day of any such month is not a business day then on or before the immediately preceding business day).

Section 4.02. Supplemental Agreements. IFA and RDA may, on the date hereof and from time to time thereafter, enter into one or more Supplemental Agreements, substantially in the form of Exhibit A, which may (a) set forth the Available Portion as of the date of such Supplemental Agreement, (b) add Additional Lease Premises to this Agreement when added under the terms of the Underlying Lease or to finance an Additional Project, (c) remove a portion of the Lease Premises being replaced, (d) state the rent payable for the Lease Premises, (e) provide that all lease covenants, including the obligation to pay rent, shall be unitary, whether covered by this Agreement or a Supplemental Agreement, or (f) contain such other covenants and agreements as the parties thereto agree upon.

Section 4.03. Appropriations. The lease rentals payable hereunder during the Initial Term or during any extension of this Agreement are payable by RDA solely from Biennial appropriations from the General Assembly of the State to RDA for such period. RDA and IFA have both determined that the rents due under this Agreement are fair and reasonable for the Lease Premises included herein. RDA can pay lease rentals solely from available revenues from the fund established under Indiana Code 36-7.5-4.

#### Section 4.04. Abatement of Rent.

(a) The lease rentals payable hereunder during the Initial Term or during any extension of this Agreement are payable by RDA solely for the actual use or availability for use of the Lease Premises or portions thereof provided by IFA.

(b) After the Commencement Date for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed, so as to render such portion unavailable for use by RDA, or shall for any other reason become unavailable for use by RDA: (i) any rental payments due for such unavailable portion of the Lease Premises shall be abated during such unavailability by an amount equal to the product of the portion of (A) the rental payments otherwise due on such portion of the Lease Premises, times (B) a fraction of such rental payments, the numerator of which fraction equals the then estimated expenses incurred or to be incurred by IFA and allocable to such portion and the denominator of which fraction equals the then estimated expenses incurred or to be incurred by IFA and allocable to the Lease Premises; or (ii) IFA may add Additional Lease Premises to this Agreement pursuant to a Supplemental Agreement so that there is no interruption in the lease rentals payable by RDA as described in clause (i) above.

## ARTICLE V

### SUBLETTING

Section 5.01. Subletting. Except for the Operating Lease, none of the Lease Premises nor any portions thereof shall be sublet by RDA to, and none of the Lease Premises nor any portions thereof shall be used by, any person (natural or otherwise), unless an Authorized Officer of IFA gives prior written consent. No such subletting shall relieve RDA from its obligations to pay any rental payment payable under this Agreement and to keep and perform all other covenants on its part to be kept and performed under this Agreement. In the event this Agreement is terminated pursuant to Section 3.02 or Section 6.02 following an event of default by RDA, other than by reason of IFA terminating this Agreement pursuant to Section 6.02 as a result of not having received a rental payment from the Funding Source under Section 6.01(a), the Operating Lease shall remain in force and effect for the benefit of IFA (who upon termination of this Agreement shall succeed to the rights, title and interest of RDA, as lessor under the Operating Lease) and NICTD.

## ARTICLE VI

### DEFAULT

Section 6.01. Default. An "event of default" shall mean, whenever that term is used in this Agreement, any one or more of the following events:

- (a) failure by RDA to pay or cause to be paid any amount payable by RDA under this Agreement, including any Supplemental Agreement, when due; or
- (b) the failure by RDA to observe or perform any covenant, condition or agreement on its part to be observed or performed under Section 7.02; or
- (c) failure by RDA to observe or perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a) or (b) of this Section 6.01, which failure continues for a period of thirty days after

written notice, specifying such failure and requesting that it be remedied, is given to RDA by an Authorized Officer of IFA.

Section 6.02. Remedies. Whenever any event of default shall have happened and be subsisting and provided that the event of default has not been cured, IFA may terminate this Agreement by written notice to RDA and/or take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of RDA under this Agreement.

Section 6.03. Remedies Cumulative. No remedy in this Agreement conferred upon or reserved to IFA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle IFA to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Agreement.

Section 6.04. Limited Waiver. In the event any agreement contained in this Agreement shall be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

## ARTICLE VII

### COVENANTS

Section 7.01. Power to Agree. IFA and RDA each covenant to the other that the execution and delivery of this Agreement has been duly authorized by all necessary corporate action, and that this Agreement has been duly executed and delivered, and constitutes a legal, valid and binding agreement in accordance with its terms and provisions.

Section 7.02. Appropriations. RDA covenants that it will do all things lawfully within its power to obtain and maintain funds from which to meet its rental payment and operation and maintenance obligations under this Agreement, including, but not limited to, requesting an appropriation in an amount sufficient to meet its rental payment and operation and maintenance obligations under this Agreement in writing at a time sufficiently in advance of the date for payment thereof so that an appropriation may be made in the normal State budgetary process, using its *bona fide* best efforts to have such request approved, and exhausting all available reviews and appeals in the event such request is not approved. RDA will pay rent at times and in amounts sufficient to pay in full the debt service payment under the terms of any Related IFA Bonds outstanding with respect to the Rail Project, including any additions to reserves for the Related IFA Bonds maintained by IFA and additional rent as provided by this Agreement.

Section 7.03. Use of Lease Premises. Notwithstanding any other provision of this Agreement to the contrary, RDA covenants that it: (a) will lease the Lease Premises to NICTD for use as a rail project as defined in Indiana Code 5-1.3-2-14, (b) will not use and will cause NICTD to agree not to use the Lease Premises or any portion thereof for any private business use within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended from time to time, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, and (c) will comply with Section 148(f) of the Internal Revenue Code of 1986, as amended from time to time. Any agreement entered into by RDA in violation of this Section 7.03 shall be of no force or effect and shall not convey any rights or impose any obligation in respect to it, at law or in equity.

Section 7.04. Maintenance of Insurance and Performance Bonds. IFA shall keep or cause NICTD to keep the Lease Premises insured against loss or damage from causes customarily insured against under a standard extended coverage endorsement in an amount at least equal to one hundred percent of the full replacement cost of the Lease Premises or such lesser amount as IFA and RDA may agree upon, if, in the opinion of an Authorized Officer of IFA, such insurance is reasonably commercially available; provided, however, such insurance coverage may contain a reasonable loss deductible clause. IFA shall at all times use its best efforts to maintain or cause to be maintained insurance or reserves against loss or damage from such hazards and risks to the person and property of others as are usually insured or reserved against by those operating properties similar to the Lease Premises. IFA shall maintain or cause to be maintained or cause NICTD to maintain or cause to be maintained such performance bonds or performance insurance with respect to contracts it may enter into for Construction of the Lease Premises as are usually maintained by those constructing properties similar to the Lease Premises.

Section 7.05. Completion of Performance; Reconstruction; Application of Proceeds. If performance of any contract for Construction of the Lease Premises is not completed in accordance with its terms and, in the opinion of a registered engineer selected by NICTD and acceptable to IFA and RDA, the cost of completion of such performance shall not exceed the amount of proceeds from any performance bond or performance insurance to be received by reason of such noncompletion of performance and other amounts available therefor, IFA or RDA, as applicable, shall, as expeditiously as possible, continuously and diligently complete or cause to be completed or cause NICTD to complete or cause to be completed such performance. If all or any portion of the Lease Premises shall be damaged or destroyed and in the opinion of a registered engineer selected by NICTD and acceptable to IFA and RDA (a) the cost of such repair, replacement or reconstruction shall not exceed the amount of any insurance proceeds to be received by reason of such damage or destruction and other amounts available therefor, and (b) such repair, replacement or reconstruction can be completed within the period covered by any rent loss insurance maintained or caused to be maintained by IFA on the Lease Premises or other amounts available therefor, IFA shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted, the repair, reconstruction or replacement thereof; provided, however, IFA may substitute an Additional Project in lieu of reconstruction to the extent permitted by Section 4.04(b) hereof. In the event IFA does not substitute an Additional Project pursuant to Section 4.04(b) hereof, within one hundred twenty days after the noncompletion of performance of any contract for Construction or the occurrence of an event of damage or destruction to the Lease Premises, IFA, through any Authorized Officer of IFA, shall deliver to

RDA and the Trustee the written opinion of the engineer referred to in this Section 7.05 stating whether or not the conditions set forth above with respect thereto are satisfied. The proceeds of any performance bond or performance insurance paid on account of such noncompletion of performance and from any insurance paid on account of such damage or destruction (other than any rent loss insurance) shall be made available for, and to the extent necessary shall be applied to, the cost of such repair, reconstruction or replacement. Such proceeds not applied within thirty-six months after receipt thereof by IFA to such completion of performance or such repair, reconstruction or replacement shall be applied to any lawful purpose of IFA.

Section 7.06. Indemnification. RDA agrees to cause NICTD, to the extent provided in the Ground Lease or the Operating Lease, to release, protect, defend, indemnify and hold harmless RDA, IFA, the Bond Trustee, the Deposit Trustee, and their respective agents, employees, representatives and consultants, from and against any and all claims, causes of action, suits, judgments, demands, and/or losses (including attorney fees), in each case if asserted or incurred by or awarded to any third party, arising out of or relating to or resulting from (a) NICTD's design, construction or operation of the Rail Project, (b) any act, omission, negligence, or willful misconduct of NICTD, any of its Ancillary Users (as defined in the Operating Lease) or anyone acting under its control or for whom it is legally responsible, (c) failure of NICTD, or anyone acting under its control or for whom it is legally responsible, to perform or observe any requirement or obligation imposed by this Agreement and (d) arising out of any other act or occurrence within the Rail Project. NICTD's indemnity obligation shall not extend to: (i) any third party claim to the extent directly caused by the sole negligence, recklessness, willful misconduct, or breach of any material obligation under this Agreement or the Governance Agreement by IFA or RDA; or (ii) any claims, causes of action, suits, judgments, demands, and/or losses resulting from any action of RDA or IFA during an Operations Step-In Period (as defined in the Governance Agreement) or resulting from any actions taken by RDA or IFA after the exercise of any Construction Period Step-In Rights (as defined in the Governance Agreement), provided however that nothing herein shall relieve NICTD of responsibility to pay up to the Maximum NICTD Excess Cost Contribution for Excess Construction Costs (as both such terms are defined in the Governance Agreement) irrespective of the exercise of Construction Period Step-In Rights. RDA and IFA shall have no obligation to indemnify NICTD.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Effectiveness. This Agreement shall be effective from and after the Effective Date, through the date on which this Agreement, or any extensions hereof, shall terminate in accordance with Section 3.02.

Section 8.02. Notices. All notices required or authorized to be given pursuant to this Agreement shall be in writing and shall be served personally or sent by certified mail to the main office of the party or parties to be notified, and the effective date thereof shall be the date of delivery, if served personally, or the date it is deposited in the mail, if mailed.

Section 8.03. Incorporation by Reference. All the covenants, agreements, terms and conditions required under the laws of the State, including the Act, to be included in any lease entered into under Indiana Code 5-1.3-5-2(a) are incorporated herein by this reference.

Section 8.04. Severability. In case any section or provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, that illegality, invalidity or inoperability shall not affect the remainder hereof or any other section or provision of this Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, which shall be construed and enforced as if that illegal, invalid or inoperable portion were not contained herein. Any such illegality, invalidity or inoperability of any application shall not affect any legal, valid, and operable application, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 8.05. Table of Contents; Captions. The Table of Contents included within this Agreement and the captions included throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 8.06. Governing Law. This Agreement shall be construed according to, and subject to, the laws of the State.

Section 8.07. Successors and Assigns. The rights and obligations of either party under this Agreement shall not be assignable by such party without the prior written consent of the other party, except that IFA may assign any of its rights under this Agreement to the Trustee. This Agreement shall inure to the benefit and shall be binding upon the respective successors and permitted assigns of the parties. Nothing herein expressed or implied is intended to confer upon any person, other than the parties or their respective successors or permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

INDIANA FINANCE AUTHORITY

By: \_\_\_\_\_  
Cristopher R. Johnston, Chair

Attest:

\_\_\_\_\_  
Dan Huges, Public Finance Director  
of the State of Indiana

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*June 20, 2019 draft*

Approved as to form and substance.

STATE BUDGET AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_, State Budget Director

Approved as to form and legality:

ATTORNEY GENERAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A

FORM OF  
SUPPLEMENT TO  
STATE APPROPRIATION MASTER LEASE AGREEMENT (WEST LAKE PROJECT)

This SUPPLEMENT TO STATE APPROPRIATION MASTER LEASE AGREEMENT (WEST LAKE PROJECT) made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (this "Supplemental Agreement"), by and between the INDIANA FINANCE AUTHORITY, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State of Indiana (the "IFA"), pursuant to Indiana Code, 5-1.2, and the Northwest Indiana Regional Development Authority, duly created and existing under by virtue of Indiana Code 36-7.5 (the "RDA");

WITNESSETH:

WHEREAS, the parties entered into a State Appropriation Master Lease Agreement (West Lake Project) as of the first day of \_\_\_\_\_, 20\_\_ (the "Agreement"); and

WHEREAS, the Agreement provides that IFA and RDA may, on the date of the Agreement and from time to time thereafter, enter into one or more Supplemental Agreements, each of which may (1) set forth the Available Portion as of the date of such Supplemental Agreement, (2) add Additional Lease Premises to the Agreement when added under the terms of the Underlying Lease or to finance an Additional Project, (3) provide for the Construction of an Additional Project in the event such Additional Project shall be financed by an additional series of IFA Related Bonds, (4) add Additional Lease Premises so that there is no interruption in the lease rentals payable by RDA as described in Section 4.04(b) of the Agreement, (5) remove a portion of the Lease Premises being replaced, (6) state the rent payable for the Lease Premises, (7) provide that all lease covenants, including the obligation to pay rent, shall be unitary, whether covered by the Agreement or a Supplemental Agreement, or (8) contain such other covenants and agreements as the parties thereto agree upon; and

WHEREAS, the parties desire, by this Supplemental Agreement, to enter into such a Supplemental Agreement covering the [Available Portion] [Additional Project] [Additional Lease Premises], described in Schedule 1 attached herto, the total expenses incurred or to be incurred by IFA and allocable to which are currently estimated to be \$\_\_\_\_\_ and the Commencement Date for which is currently projected to be \_\_\_\_\_ (the "Projected Commencement Date");

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein set forth, the parties agree as follows:

Section 1. Agreement to Remain in Effect. Subject to the amendments, modifications and agreements contained in this Supplemental Agreement, all the terms and provisions of the Agreement shall remain in full force and effect, and are hereby incorporated

herein by this reference. All capitalized terms used herein and not defined herein shall have the respective meanings set forth in the Agreement.

Section 2. Description of the [Available Portion] [Additional Project] [Additional Lease Premises]. The [Available Portion] [Additional Project] [Additional Lease Premises] covered by this Supplemental Agreement is described in Schedule 1 attached hereto. [IFA and RDA represent that the Additional Project has been or will be constructed in accordance with the Governance Agreement, any Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable plans and specifications therefor. The Funded Interest Date for the Additional Project is \_\_\_\_\_.]

Section 3. Rental Payments. Commencing on the Commencement Date for the [Available Portion] [Additional Project] [Additional Lease Premises] through \_\_\_\_\_, \_\_\_\_\_, RDA shall pay on a monthly basis, in arrears, the rental payments set forth in the Addendum attached hereto in accordance with Article IV of the Agreement.

Section 4. Amendments. IFA and RDA shall, on the Commencement Date for the [Available Portion] [Additional Project] [Additional Lease Premises] and from time to time thereafter, enter into one or more amendments to this Supplemental Agreement, each of which amendments shall include an addendum superseding the Addendum to: (a) adjust the rental payments under this Supplemental Agreement to reflect the then estimated expenses incurred or to be incurred by IFA in accordance with Indiana Code 5-1.3-5-2(a)(4); and (b) make such other changes as the parties may agree upon.

Section 5. Covenants Unitary. All covenants under the Agreement, this Supplemental Agreement or any other Supplemental Agreement, including the obligation to pay rent, shall be unitary and include all Lease Premises, whether covered by the Agreement, this Supplemental Agreement or any other Supplemental Agreement.

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

INDIANA FINANCE AUTHORITY

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Public Finance Director  
of the State of Indiana

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form and substance:

STATE BUDGET AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_, State Budget Director

Approved as to form and legality:

ATTORNEY GENERAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ADDENDUM

MONTHLY RENTAL PAYMENT SCHEDULE

<u>Month Available For Use</u>	<u>Month Payments Due</u>	<u>Rental Payments</u>
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SCHEDULE 1

[AVAILABLE PORTION] [ADDITIONAL PROJECT] [ADDITIONAL LEASE PREMISES]

EXHIBIT B  
LEASE PREMISES

EXHIBIT C  
FORM OF MEMORANDUM

**RDA AVAILABLE REVENUE MASTER LEASE AGREEMENT  
(WEST LAKE PROJECT)**

**by and between**

**INDIANA FINANCE AUTHORITY,  
as Lessor**

**and**

**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY  
as Lessee**

**Dated as of \_\_\_\_\_ 1, 20\_\_**

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**RDA AVAILABLE REVENUE MASTER LEASE AGREEMENT  
(WEST LAKE PROJECT)**

This RDA AVAILABLE REVENUE MASTER LEASE AGREEMENT (WEST LAKE PROJECT) made and entered into as of the first day of \_\_\_\_\_, 20\_\_ (this "Agreement"), by and between the INDIANA FINANCE AUTHORITY, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State of Indiana (the "IFA"), pursuant to Indiana Code 5-1.2, and the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, duly created and existing under and by virtue of Indiana Code 36-7.5 (the "RDA");

WITNESSETH:

WHEREAS, this Agreement is designed to provide a master leasing structure with respect to various portions of the Rail Project defined herein that relate to bonds issued by IFA for the Rail Project and are payable from the Funding Source set forth herein (the "Related IFA Bonds"); and

WHEREAS, as series of Related IFA Bonds are authorized to provide additional funding for the Rail Project, IFA and RDA shall describe the Additional Project to be funded from that specific series of Related IFA Bonds and the lease rentals payable by RDA with respect thereto in a Supplemental Agreement;

In consideration of the mutual covenants herein set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND GENERAL PROVISIONS

Section 1.01. Definitions. The following words and terms as used in this Agreement or in any Supplemental Agreement or other amendment or supplement hereto shall have the following meanings unless provided for in this Agreement or in any Supplemental Agreement or other amendment or supplement hereto, unless the context or use clearly indicates another or different meaning or intent:

"Act" shall mean Indiana Code 5-1.3, as amended or supplemented, or any successor thereto.

"Additional Lease Premises" shall mean any additional real property that is acquired for the Rail Project or an Additional Project with the proceeds of any series of Related IFA Bonds or incorporated therein in connection with any series of Related IFA Bonds, which is added to this Agreement pursuant to the terms set forth in Section 3.05.

"Additional Project" shall mean an additional portion of the Rail Project that becomes part of the Lease Premises in the manner provided in Section 3.06.

"Agreement" shall mean this RDA Available Revenue Master Lease Agreement (West Lake Project) as from time to time amended or supplemented by any Supplemental Agreement or other amendment or supplement hereto, including a Supplemental Memorandum of Lease.

"Authorized Officer of IFA" shall mean the Chair of IFA or the Public Finance Director of the State of Indiana and, with reference to any act or document, also means any other person authorized by a resolution of IFA to perform such act or to sign such document.

"Authorized Officer of RDA" shall mean the Chair or the Chief Executive Officer of RDA and, with reference to any act or document, also means any other person authorized by a resolution of RDA to perform such act or to sign such document.

"Available Portion" shall mean, collectively, the portions of the Lease Premises that are available for use.

"Bond Trustee" shall mean the trustee bank serving as Trustee for the Related IFA Bonds.

"Commencement Date" for any Lease Premises or any portion thereof shall mean the date on which a Completion Certificate for such Lease Premises or such portion thereof is accepted by an Authorized Officer of RDA.

"Completion Certificate" for any Lease Premises or any portion thereof shall mean a certificate (a) executed by an Authorized Officer of IFA certifying that such Lease Premises or such portion thereof is available for use by RDA and (b) accepted by an Authorized Officer of RDA acknowledging that such Lease Premises or such portion thereof is available for use by RDA.

"Construction" shall mean constructing, acquiring, renovating, rehabilitating, reconstructing, improving, extending or equipping the Rail Project or the Lease Premises or any portion thereof.

"Deposit Trustee" shall mean the trustee bank acting as the Deposit Trustee under the Revenue Trust Fund Agreement.

"Development Agreement" shall mean any development agreement entered into by NICTD, RDA and IFA for the purpose of governing the completion of the Rail Project in a manner consistent with and as contemplated by the Governance Agreement.

"Effective Date" shall mean the date of execution and delivery of this Agreement, which is \_\_\_\_\_, 20\_\_.

"Fiscal Year" shall mean the twelve-month period commencing on July 1 of each year and ending on the succeeding June 30, or such other fiscal year of the State as may be mandated by law.

“Funded Interest Date” shall mean the date until which the proceeds of a series of Related IFA Bonds are expected to pay the interest thereon. There is no Funded Interest Date for that portion of the Rail Project being financed with the initial series of the Related IFA Bonds.

"Funding Source" shall mean any available revenues of RDA, including, without limitation: (a) the portion of the annual payments to RDA from the Cities of Gary, East Chicago and Hammond and the Counties of Lake and Porter due under Indiana Code 6-3.6-6-9, Indiana Code 36-7.5-4-2 and Indiana Code 6-3.6-11-6(b); (b) amounts withheld by the auditor of State from certain municipalities within Lake County, as determined by the Indiana Department of Local Government Finance, and paid to the Secretary-Treasurer of RDA pursuant to Indiana Code 6-3.6-11-5.5; and (c) revenues derived from the Interlocal Agreements or from other actions taken by certain municipalities within Lake County offering to provide revenue to support and finance the Rail Project pursuant to Indiana Code 6-3.6-11-7; which available revenues RDA has pledged to the payment of the lease rentals due under this Agreement, as provided herein or in a Supplemental Agreement. Notwithstanding the above definition: (i) with respect to the initial series of Related IFA Bonds purchased by the State Treasurer as provided in IC 5-13-10.5-20, to the extent provided in IC 36-7.5-4-21, it is understood that available revenues of RDA only include those sources described in clause (a) above; and (ii) IFA agrees that, so long as RDA pays the rentals due under this Lease Agreement, RDA is permitted to determine what amount of the available revenues from each of the clauses (a)-(c) above shall be applied to payment of such rentals.

"Governance Agreement" shall mean the Governance Agreement dated as of August 1, 2018, by and among NICTD, RDA and IFA, as from time to time amended or supplemented in accordance with its terms.

“Ground Lease” shall mean the Ground Lease Agreement, dated as of \_\_\_\_\_ 1, 20\_\_\_, between NICTD, as lessor, and RDA, as lessee.

"IFA" shall mean the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State, pursuant to Indiana Code 5-1.2, as supplemented and amended.

"IFA RDA Available Revenue Account" shall mean the account of such name held under Section 5(a)(iii) of the Revenue Trust Fund Agreement.

"Lease Premises" shall mean the property described in Exhibit B hereto from time to time as Supplemental Agreements specify the portion of the Rail Project financed with Related IFA Bonds as provided in Section 3.06 hereof, including without limitation, all Rail Project Property related thereto and any Additional Lease Premises included in the Lease Premises by reason of Section 3.05 hereof.

"Memorandum" shall mean the Memorandum of Lease attached hereto as Exhibit C to be recorded contemporaneously with the execution of this Agreement with respect to identifying the Lease Premises.

"NICTD" shall mean the Northern Indiana Commuter Transportation District established under Indiana Code 8-5-15.

"Operating Lease" shall mean the Operating Lease Agreement, dated as of \_\_\_\_\_ 1, 20\_\_, between RDA, as lessor, and NICTD, as lessee.

"Projected Commencement Date" for any Additional Project shall mean the projected Commencement Date for such Additional Project, as set forth in the Supplemental Agreement covering such Additional Project.

"Rail Project" shall mean the West Lake Corridor Project described in Exhibit A to the Underlying Lease.

"Rail Project Property" shall mean all real and personal property interests, including, but not limited to, the Lease Premises, each Additional Project and such easements, licenses, leases, or property rights, in whatever form reasonably necessary to construct and operate the Rail Project, but not including NICTD rolling stock, except to the extent any costs for rolling stock are included in the applicable Cost Budget (as defined in the Governance Agreement), as the Rail Project is identified and described in Exhibit A to the Underlying Lease.

"RDA" shall mean the Northwest Indiana Regional Development Authority, organized and existing under Indiana Code 36-7.5.

"Related IFA Bonds" shall mean the bonds issued by IFA to finance the Rail Project, including any Additional Project, which are secured by the rental payments due under this Agreement. The initial series of Related IFA Bonds are the Indiana Finance Authority Lease RDA Available Revenue Bonds (West Lake Project), Series 20\_\_ \_.

"Revenue Trust Fund Agreement" shall mean the Revenue Trust Fund Agreement, dated as of \_\_\_\_\_ 1, 2019, entered into by and among RDA, IFA, NICTD, the Bond Trustee, and the Deposit Trustee.

"State" shall mean the State of Indiana.

"Supplemental Agreement" shall mean any agreement supplemental or amendatory of this Agreement entered into in accordance with Article IV, including each Supplemental Agreement that describes an Additional Project to be included in the Lease Premises hereunder as provided in Section 3.06 hereof.

"Supplemental Memorandum of Lease" shall mean each Supplemental Memorandum of Lease recorded in connection with the addition of Additional Lease Premises in the manner provided in Section 3.05 hereof.

"Term" shall mean the period of time commencing on the date hereof and ending on \_\_\_\_\_.

"Underlying Lease" shall mean the Underlying Lease Agreement dated as of \_\_\_\_\_ 1, 20\_\_ between RDA and IFA as from time to time amended or supplemented in accordance with its terms.

Section 1.02. Interpretations. Unless the context indicates otherwise, words importing the singular number shall include the plural number and words importing the plural number shall include the singular number. The terms "hereof," "herein," "hereby," "hereto," "hereunder" and similar terms mean this Agreement.

Section 1.03. Not Indebtedness of State. It is expressly understood and agreed by the parties hereto that this Agreement does not constitute an indebtedness of the State within the meaning or application of any constitutional provision or limitation, or a pledge of the faith or credit of the State.

Section 1.04. Not Indebtedness of RDA. It is expressly understood and agreed by the parties hereto that this Agreement does not constitute an indebtedness of RDA within the meaning or application of any constitutional provision or limitation, or a pledge of the faith or credit of RDA.

## ARTICLE II

### CONSTRUCTION OF THE RAIL PROJECT

Section 2.01. Construction of the Rail Project. IFA and RDA represent that the Rail Project has been or will be constructed in accordance with the Governance Agreement, any Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable plans and specifications therefor.

## ARTICLE III

### LEASE AND MAINTENANCE OF LEASE PREMISES

Section 3.01. Lease of Lease Premises. In consideration of the rents, covenants and agreements contained herein, IFA does hereby demise and lease to RDA, and RDA does hereby rent and lease from IFA, the Lease Premises from and after the Effective Date for such Lease Premises. IFA and RDA shall file and record a Supplemental Memorandum of Lease covering any Additional Lease Premises as provided in Section 3.05 and any Supplemental Agreement adding any Additional Project as provided in Section 3.06 hereof.

Section 3.02. Term of Lease. The Term shall end on \_\_\_\_\_; provided the Term shall end earlier or later than such date, upon the occurrence of the first of the following events, in which case, this Agreement shall terminate upon the date of occurrence of such event:

- (a) Upon receipt of notice from IFA to RDA that all Related IFA Bonds have been paid in full and all other obligations and lease rentals due to IFA hereunder or under the Governance Agreement with respect to the Rail Project have been paid in full;
- (b) the termination of this Agreement by IFA pursuant to Section 6.02; or

(c) the termination of the Underlying Lease.

Section 3.03. Operation and Maintenance. RDA shall cause NICTD at all times, in accordance with its then current practices, to operate and maintain the Lease Premises during the Term of this Agreement in an efficient and economical manner, as required by the Governance Agreement, and in accordance with its then current practices, to maintain the Lease Premises in good repair and sound operating condition and to make all necessary repairs, renewals, replacements and improvements thereto, all at the expense of NICTD, except that IFA shall maintain insurance on the Lease Premises in accordance with Section 7.04 at its expense. RDA shall cause NICTD to comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to NICTD and the Lease Premises. RDA shall cause NICTD to adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the operation thereof, and shall enforce such rules and regulations. RDA and IFA shall cause NICTD to comply with the foregoing requirements through the operation of the covenants and agreements of NICTD contained in the Governance Agreement, at which time RDA shall also cause NICTD to comply with the foregoing requirements through the operation of the covenants and agreements of NICTD contained in the Ground Lease and the Operating Lease.

Section 3.04. Alterations or Modifications of the Lease Premises. RDA shall not, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, make or cause to be made or permit NICTD to make or cause to be made, any alteration, modification, addition or improvement to all or any portion of the Lease Premises, which alteration, modification, addition or improvement materially impairs the value of the Lease Premises, unless such alteration, modification, addition or improvement is, in the opinion of NICTD, as permitted by the Governance Agreement or as is necessary or advisable for the safety of the public.

Section 3.05. Additional Lease Premises. In the event Additional Lease Premises are added to the property leased by RDA to IFA pursuant to the Underlying Lease, such Additional Lease Premises shall immediately without further action become part of the Lease Premises subject to this Agreement upon the recordation of a Supplemental Memorandum of Lease executed by IFA and RDA in the offices of the Recorder of Lake County, Indiana.

Section 3.06. Additional Project. IFA and RDA contemplate that the Rail Project may be funded in part by the issuance of an additional series of Related IFA Bonds from time to time to finance an Additional Project that constitutes a part of the Rail Project. In that event, IFA and RDA shall execute and deliver a Supplemental Agreement at such time to describe the Additional Project, provide for the Construction of such Additional Project and specify the rent due from RDA for such Additional Project.

## ARTICLE IV

### RENTS

Section 4.01. Timing for Payment. Subject to Sections 4.03 and 4.04 hereof, RDA shall pay, in arrears, without relief from valuation or appraisal laws and without a defense of set-

off, counterclaim or recoupment, a monthly rental for the Lease Premises or any portions thereof available for use, in an amount equal to the aggregate monthly rental payments set forth in the Supplemental Agreements, to IFA by general transfer of funds from an account of RDA or from the IFA RDA Available Revenue Revenue Account to such account as IFA may from time to time specify, so as to assure immediately available funds in such account on or before the first day of each month succeeding those months during which the Lease Premises or such portions thereof were actually used or available for use by RDA pursuant to this Agreement (provided that if the first day of any such month is not a business day then on or before the immediately preceding business day).

Section 4.02. Supplemental Agreements. IFA and RDA may, on the date hereof and from time to time thereafter, enter into one or more Supplemental Agreements, substantially in the form of Exhibit A, which may (a) set forth the Available Portion as of the date of such Supplemental Agreement, (b) add Additional Lease Premises to this Agreement when added under the terms of the Underlying Lease or to finance an Additional Project, (c) remove a portion of the Lease Premises being replaced, (d) state the rent payable for the Lease Premises, (e) provide that all lease covenants, including the obligation to pay rent, shall be unitary, whether covered by this Agreement or a Supplemental Agreement, or (f) contain such other covenants and agreements as the parties thereto agree upon.

Section 4.03. Funding Source. The lease rentals payable hereunder are payable by RDA solely from the Funding Source. RDA and IFA have both determined that the rents due under this Agreement are fair and reasonable for the Lease Premises included herein. RDA can pay lease rentals solely from the Funding Source.

Section 4.04. Abatement of Rent.

(a) The lease rentals payable hereunder during the Term of this Agreement are payable by RDA solely for the actual use or availability for use of the Lease Premises or portions thereof provided by IFA.

(b) After the Commencement Date for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed, so as to render such portion unavailable for use by RDA, or shall for any other reason become unavailable for use by RDA: (i) any rental payments due for such unavailable portion of the Lease Premises shall be abated during such unavailability by an amount equal to the product of the portion of (A) the rental payments otherwise due on such portion of the Lease Premises, times (B) a fraction of such rental payments, the numerator of which fraction equals the then estimated expenses incurred or to be incurred by IFA and allocable to such portion and the denominator of which fraction equals the then estimated expenses incurred or to be incurred by IFA and allocable to the Lease Premises; or (ii) IFA may add Additional Lease Premises to this Agreement pursuant to a Supplemental Agreement so that there is no interruption in the lease rentals payable by RDA as described in clause (i) above.

ARTICLE V

SUBLETTING

Section 5.01. Subletting. Except for the Operating Lease, none of the Lease Premises nor any portions thereof shall be sublet by RDA to, and none of the Lease Premises nor any portions thereof shall be used by, any person (natural or otherwise), unless an Authorized Officer of IFA gives prior written consent. No such subletting shall relieve RDA from its obligations to pay any rental payment payable under this Agreement and to keep and perform all other covenants on its part to be kept and performed under this Agreement. In the event this Agreement is terminated pursuant to Section 3.02 or Section 6.02 following an event of default by RDA, the Operating Lease shall remain in force and effect for the benefit of IFA (who upon termination of this Agreement shall succeed to the rights, title and interest of RDA, as lessor under the Operating Lease) and NICTD.

ARTICLE VI

DEFAULT

Section 6.01. Default. An "event of default" shall mean, whenever that term is used in this Agreement, any one or more of the following events:

- (a) failure by RDA to pay or cause to be paid any amount payable by RDA under this Agreement, including any Supplemental Agreement, when due; or
- (b) the failure by RDA to observe or perform any covenant, condition or agreement on its part to be observed or performed under Section 7.02; or
- (c) failure by RDA to observe or perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a) or (b) of this Section 6.01, which failure continues for a period of thirty days after written notice, specifying such failure and requesting that it be remedied, is given to RDA by an Authorized Officer of IFA.

Section 6.02. Remedies. Whenever any event of default shall have happened and be subsisting and provided that the event of default has not been cured, IFA may terminate this Agreement by written notice to RDA and/or take whatever action at law or in equity may appear necessary or desirable to collect the payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of RDA under this Agreement.

Section 6.03. Remedies Cumulative. No remedy in this Agreement conferred upon or reserved to IFA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. To entitle IFA to exercise

any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Agreement.

Section 6.04. Limited Waiver. In the event any agreement contained in this Agreement shall be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

## ARTICLE VII

### COVENANTS

Section 7.01. Power to Agree. IFA and RDA each covenant to the other that the execution and delivery of this Agreement has been duly authorized by all necessary corporate action, and that this Agreement has been duly executed and delivered, and constitutes a legal, valid and binding agreement in accordance with its terms and provisions.

Section 7.02. Funding Source. RDA covenants that it will do all things lawfully within its power to obtain and maintain funds from the Funding Source needed to meet its rental payment and operation and maintenance obligations under this Agreement. RDA will pay rent at times and in amounts sufficient to pay in full the debt service payment under the terms of any Related IFA Bonds outstanding with respect to the Rail Project, including any additions to reserves for the Related IFA Bonds maintained by IFA and additional rent as provided by this Agreement.

Section 7.03. Use of Lease Premises. Notwithstanding any other provision of this Agreement to the contrary, RDA covenants that it: (a) will lease the Lease Premises to NICTD for use as a rail project as defined in Indiana Code 5-1.3-2-14, (b) will not use and will cause NICTD to agree not to use the Lease Premises or any portion thereof for any private business use within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended from time to time, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, and (c) will comply with Section 148(f) of the Internal Revenue Code of 1986, as amended from time to time. Any agreement entered into by RDA in violation of this Section 7.03 shall be of no force or effect and shall not convey any rights or impose any obligation in respect to it, at law or in equity.

Section 7.04. Maintenance of Insurance and Performance Bonds. IFA shall keep or cause NICTD to keep the Lease Premises insured against loss or damage from causes customarily insured against under a standard extended coverage endorsement in an amount at least equal to one hundred percent of the full replacement cost of the Lease Premises or such lesser amount as IFA and RDA may agree upon, if, in the opinion of an Authorized Officer of IFA, such insurance is reasonably commercially available; provided, however, such insurance coverage may contain a reasonable loss deductible clause. IFA shall at all times use its best efforts to maintain or cause to be maintained insurance or reserves against loss or damage from such hazards and risks to the person and property of others as are usually insured or reserved against by those operating properties similar to the Lease Premises. IFA shall maintain or cause to be maintained or cause NICTD to maintain or cause to be maintained such performance bonds

or performance insurance with respect to contracts it may enter into for Construction of the Lease Premises as are usually maintained by those constructing properties similar to the Lease Premises. RDA shall not be responsible for paying the cost of any insurance required to be kept or maintained or caused to be kept or maintained under this Section.

Section 7.05. Completion of Performance; Reconstruction; Application of Proceeds. If performance of any contract for Construction of the Lease Premises is not completed in accordance with its terms and, in the opinion of a registered engineer selected by NICTD and acceptable to IFA and RDA, the cost of completion of such performance shall not exceed the amount of proceeds from any performance bond or performance insurance to be received by reason of such noncompletion of performance and other amounts available therefor, IFA or RDA, as applicable, shall, as expeditiously as possible, continuously and diligently complete or cause to be completed or cause NICTD to complete or cause to be completed such performance. If all or any portion of the Lease Premises shall be damaged or destroyed and in the opinion of a registered engineer selected by NICTD and acceptable to IFA and RDA (a) the cost of such repair, replacement or reconstruction shall not exceed the amount of any insurance proceeds to be received by reason of such damage or destruction and other amounts available therefor, and (b) such repair, replacement or reconstruction can be completed within the period covered by any rent loss insurance maintained or caused to be maintained by IFA on the Lease Premises or other amounts available therefor, IFA shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted, the repair, reconstruction or replacement thereof; provided, however, IFA may substitute an Additional Project in lieu of reconstruction to the extent permitted by Section 4.04(b) hereof. In the event IFA does not substitute an Additional Project pursuant to Section 4.04(b) hereof, within one hundred twenty days after the noncompletion of performance of any contract for Construction or the occurrence of an event of damage or destruction to the Lease Premises, IFA, through any Authorized Officer of IFA, shall deliver to RDA and the Trustee the written opinion of the engineer referred to in this Section 7.05 stating whether or not the conditions set forth above with respect thereto are satisfied. The proceeds of any performance bond or performance insurance paid on account of such noncompletion of performance and from any insurance paid on account of such damage or destruction (other than any rent loss insurance) shall be made available for, and to the extent necessary shall be applied to, the cost of such repair, reconstruction or replacement. Such proceeds not applied within thirty-six months after receipt thereof by IFA to such completion of performance or such repair, reconstruction or replacement shall be applied to any lawful purpose of IFA.

Section 7.06. Indemnification. RDA agrees to cause NICTD, to the extent provided in the Ground Lease or the Operating Lease, to release, protect, defend, indemnify and hold harmless RDA, IFA, the Bond Trustee, the Deposit Trustee, and their respective agents, employees, representatives and consultants, from and against any and all claims, causes of action, suits, judgments, demands, and/or losses (including attorney fees), in each case if asserted or incurred by or awarded to any third party, arising out of or relating to or resulting from (a) NICTD's design, construction or operation of the Rail Project, (b) any act, omission, negligence, or willful misconduct of NICTD, any of its Ancillary Users (as defined in the Operating Lease) or anyone acting under its control or for whom it is legally responsible, (c) failure of NICTD, or anyone acting under its control or for whom it is legally responsible, to perform or observe any requirement or obligation imposed by this Agreement and (d) arising out of any other act or occurrence within the Rail Project. NICTD's indemnity obligation shall not extend to: (i) any

third party claim to the extent directly caused by the sole negligence, recklessness, willful misconduct, or breach of any material obligation under this Agreement or the Governance Agreement by IFA or RDA; or (ii) any claims, causes of action, suits, judgments, demands, and/or losses resulting from any action of RDA or IFA during an Operations Step-In Period (as defined in the Governance Agreement) or resulting from any actions taken by RDA or IFA after the exercise of any Construction Period Step-In Rights (as defined in the Governance Agreement), provided however that nothing herein shall relieve NICTD of responsibility to pay up to the Maximum NICTD Excess Cost Contribution for Excess Construction Costs (as both such terms are defined in the Governance Agreement) irrespective of the exercise of Construction Period Step-In Rights. RDA and IFA shall have no obligation to indemnify NICTD.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Effectiveness. This Agreement shall be effective from and after the Effective Date, through the date on which this Agreement, or any extensions hereof, shall terminate in accordance with Section 3.02.

Section 8.02. Notices. All notices required or authorized to be given pursuant to this Agreement shall be in writing and shall be served personally or sent by certified mail to the main office of the party or parties to be notified, and the effective date thereof shall be the date of delivery, if served personally, or the date it is deposited in the mail, if mailed.

Section 8.03. Severability. In case any section or provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, that illegality, invalidity or inoperability shall not affect the remainder hereof or any other section or provision of this Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, which shall be construed and enforced as if that illegal, invalid or inoperable portion were not contained herein. Any such illegality, invalidity or inoperability of any application shall not affect any legal, valid, and operable application, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 8.04. Table of Contents; Captions. The Table of Contents included within this Agreement and the captions included throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 8.05. Governing Law. This Agreement shall be construed according to, and subject to, the laws of the State.

Section 8.06. Successors and Assigns. The rights and obligations of either party under this Agreement shall not be assignable by such party without the prior written consent of the other party, except that IFA may assign any of its rights under this Agreement to the Trustee. This Agreement shall inure to the benefit and shall be binding upon the respective successors and permitted assigns of the parties. Nothing herein expressed or implied is intended to confer upon any person, other than the parties or their respective successors or permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

*June 20, 2019 draft*

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

INDIANA FINANCE AUTHORITY

By: \_\_\_\_\_  
Cristopher R. Johnston, Chair

Attest:

\_\_\_\_\_  
Dan Huges, Public Finance Director  
of the State of Indiana

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*June 20, 2019 draft*

Approved as to form and substance:

STATE BUDGET AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_, State Budget Director

Approved as to form and legality:

ATTORNEY GENERAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**FORM OF  
SUPPLEMENT TO RDA AVAILABLE REVENUE MASTER LEASE AGREEMENT  
(WEST LAKE PROJECT)**

[AVAILABLE PORTION] [ADDITIONAL PROJECT] [ADDITIONAL LEASE PREMISES]

This SUPPLEMENT TO RDA AVAILABLE REVENUE MASTER LEASE AGREEMENT (WEST LAKE PROJECT) made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (this "Supplemental Agreement"), by and between the INDIANA FINANCE AUTHORITY, a body politic and corporate, not a state agency but an independent instrumentality, exercising essential public functions, duly organized and validly existing under the laws of the State of Indiana (the "IFA"), pursuant to Indiana Code, 5-1.2, and the Northwest Indiana Regional Development Authority, duly created and existing under by virtue of Indiana Code 36-7.5 (the "RDA");

WITNESSETH:

WHEREAS, the parties entered into an RDA Available Revenue Master Lease Agreement (West Lake Project) as of the first day of \_\_\_\_\_, 20\_\_ (the "Agreement"); and

WHEREAS, the Agreement provides that IFA and RDA may, on the date of the Agreement and from time to time thereafter, enter into one or more Supplemental Agreements, each of which may (1) set forth the Available Portion as of the date of such Supplemental Agreement, (2) add Additional Lease Premises to the Agreement when added under the terms of the Underlying Lease or to finance an Additional Project, (3) provide for the Construction of an Additional Project in the event such Additional Project shall be financed by an additional series of IFA Related Bonds, (4) add Additional Lease Premises so that there is no interruption in the lease rentals payable by RDA as described in Section 4.04(b) of the Agreement, (5) remove a portion of the Lease Premises being replaced, (6) state the rent payable for the Lease Premises, (7) provide that all lease covenants, including the obligation to pay rent, shall be unitary, whether covered by the Agreement or a Supplemental Agreement, or (8) contain such other covenants and agreements as the parties thereto agree upon; and

WHEREAS, the parties desire, by this Supplemental Agreement, to enter into such a Supplemental Agreement covering the [Available Portion] [Additional Project] [Additional Lease Premises], described in Schedule 1 attached herto, the total expenses incurred or to be incurred by IFA and allocable to which are currently estimated to be \$\_\_\_\_\_ and the Commencement Date for which is currently projected to be \_\_\_\_\_ (the "Projected Commencement Date");

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants herein set forth, the parties agree as follows:

Section 1. Agreement to Remain in Effect. Subject to the amendments, modifications and agreements contained in this Supplemental Agreement, all the terms and

provisions of the Agreement shall remain in full force and effect, and are hereby incorporated herein by this reference. All capitalized terms used herein and not defined herein shall have the respective meanings set forth in the Agreement.

Section 2. Description of the [Available Portion] [Additional Project] [Additional Lease Premises]. The [Available Portion] [Additional Project] [Additional Lease Premises] covered by this Supplemental Agreement is described in Schedule 1 attached hereto. [IFA and RDA represent that the Additional Project has been or will be constructed in accordance with the Governance Agreement, any Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable plans and specifications therefor. The Funded Interest Date for the Additional Project is \_\_\_\_\_.]

Section 3. Rental Payments. Commencing on the Commencement Date for the [Available Portion] [Additional Project] [Additional Lease Premises] through \_\_\_\_\_, \_\_\_\_\_, RDA shall pay on a monthly basis, in arrears, the rental payments set forth in the Addendum attached hereto in accordance with Article IV of the Agreement.

Section 4. Amendments. IFA and RDA shall, on the Commencement Date for the [Available Portion] [Additional Project] [Additional Lease Premises] and from time to time thereafter, enter into one or more amendments to this Supplemental Agreement, each of which amendments shall include an addendum superseding the Addendum to: (a) adjust the rental payments under this Supplemental Agreement to reflect the then estimated expenses incurred or to be incurred by IFA; and (b) make such other changes as the parties may agree upon.

Section 5. Covenants Unitary. All covenants under the Agreement, this Supplemental Agreement or any other Supplemental Agreement, including the obligation to pay rent, shall be unitary and include all Lease Premises, whether covered by the Agreement, this Supplemental Agreement or any other Supplemental Agreement.

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed by their duly authorized officers as of the day and year first hereinabove set forth.

INDIANA FINANCE AUTHORITY

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Public Finance Director  
of the State of Indiana

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*June 20, 2019 draft*

Approved as to form and substance:

STATE BUDGET AGENCY

By: \_\_\_\_\_  
\_\_\_\_\_, State Budget Director

Approved as to form and legality:

ATTORNEY GENERAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ADDENDUM

MONTHLY RENTAL PAYMENT SCHEDULE

<u>Month Available For Use</u>	<u>Month Payments Due</u>	<u>Rental Payments</u>
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SCHEDULE 1

[AVAILABLE PORTION] [ADDITIONAL PROJECT] [ADDITIONAL LEASE PREMISES]

EXHIBIT B  
LEASE PREMISES

EXHIBIT C  
FORM OF MEMORANDUM

OPERATING LEASE AGREEMENT (WEST LAKE PROJECT)

between

NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY

as Lessor

and

NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

as Lessee

Dated as of \_\_\_\_\_, \_\_\_\_\_

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## OPERATING LEASE AGREEMENT (WEST LAKE PROJECT)

This Operating Lease Agreement (West Lake Project) (this "Operating Lease") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, a separate body corporate and politic formed pursuant to Indiana Code 36-7.5, as supplemented and amended from time to time ("RDA"), and the NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT, a commuter transportation district and a municipal corporation formed pursuant to Indiana Code 8-5-15, as amended ("NICTD").

### RECITALS

1. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the hereinafter defined Governance Agreement;
2. The South Shore Line is a commuter train service between South Bend, Indiana and Millennium Station in Chicago, Illinois;
3. NICTD has owned and operated the South Shore Line for nearly forty years and has experience in developing capital rail projects for the South Shore Line and in requesting, obtaining and managing federal grant funds through the Federal Transit Administration;
4. RDA fosters development in northwest Indiana and has since its inception fostered economic development throughout northwest Indiana and has been vested pursuant to IC 36-7.5-4-18 with certain powers and duties with respect to the Rail Project;
5. IFA oversees State debt issuance and provides effective financing solutions to facilitate State, local and business investment in the State and has participated in numerous important economic development activities throughout the State;
6. RDA and NICTD have developed and advanced plans for improvements to the South Shore Line, specifically the Double Track Project (as defined below) and the West Lake Corridor Project (as defined below and also defined as the "Rail Project") , which will improve the South Shore Line and foster economic development throughout northwest and north central Indiana by shortening commute times, providing new rail service to areas not serviced by rail transportation to Chicago, enhancing the economic and community development of the northwest Indiana region, and increasing the convenience to the areas served;
7. RDA has determined that providing assistance to the Rail Project in the manner herein provided serves a public purpose for which RDA was created;
8. The Rail Project is expected to encourage business investment in and near the station areas, provide faster, less expensive and reliable transportation, relieve existing and anticipated traffic congestion, reduce vehicular emissions, reduce commuting costs and attract and retain families and younger residents in northwest and north central Indiana;
9. The Rail Project is expected to provide faster travel times, accommodate more trains to improve service during rush hour travel and be safer to operate;

10. RDA, IFA and NICTD have identified and obtained committed local and State funding for the Rail Project;

11. NICTD has applied for necessary federal grant funding from FTA on behalf of RDA and the State, and in its capacity as the grantee, and as the signatory party to that certain Full Funding Grant Agreement with FTA, will maintain continuing control of the assets receiving FTA funding, subject to the terms of the Governance Agreement, the Development Agreement, if any, this Operating Lease and the other leases described herein;

12. The Parties desire to jointly complete FTA grant application processes for the West Lake Corridor Project, in order to facilitate the further development, design, construction and financing of the West Lake Corridor Project as improvements to the South Shore Line commuter rail system;

13. Any obligations of RDA or IFA shall not constitute a debt of the State or any municipality, or a pledge of the full faith and credit thereof, under the Constitution of the State;

14. Providing financial support to the Rail Project and the development and operation thereof are valid public purposes of RDA, IFA and NICTD, will contribute importantly to the economic and community development of northwest Indiana and will benefit the citizens of northwest Indiana;

15. In connection with the IFA Bonds, RDA, NICTD, and IFA are required to enter into one or more leases for the purpose of providing for the issuance and repayment of the IFA Bonds;

16. The funding for the payment of lease rentals by RDA for payment of the IFA Bonds will be provided from State appropriations, FTA Grant Reimbursements, moneys on deposit in the next generation trust fund established under IC 8-14-15.2 and Available Revenues;

17. NICTD expects that FTA funding will fund a portion of the costs of the Rail Project, subject to local funding of the remaining share;

18. NICTD, RDA, and IFA intend to enter into the Revenue Trust Fund Agreement with the Deposit Trustee and the Bond Trustee for the purposes of receiving and safeguarding substantially all funds for the Rail Project, including substantially all funding sources to be used to pay lease rentals;

19. RDA and IFA are willing to assist NICTD in providing a mechanism to fund the Rail Project pursuant and subject to the Governance Agreement and the Development Agreement and to comply with and advance the public purposes described herein;

20. In connection therewith and subject to this Operating Lease, certain Real Estate and Rail Improvements will be leased by NICTD to RDA pursuant to the Ground Lease, then leased by RDA to IFA pursuant to the Underlying Lease, then leased by IFA to RDA pursuant to the Master Leases, and then leased by RDA to NICTD pursuant to this Operating Lease, and IFA will issue the IFA Bonds and cause certain proceeds thereof to be made available to NICTD to pay costs incurred in undertaking the Rail Project;

21. Contemporaneous with or subsequent to the commencement of existence of the leasehold estate under this Operating Lease, RDA and IFA shall cause the Underlying Lease, IFA and RDA shall cause the Master Leases, and RDA and NICTD shall cause the Ground Lease, to each be effective; and

22. NICTD acknowledges that IFA's and RDA's right of occupancy and continuous possession of the Real Estate (and the Rail Improvements) and its lawful right to lease the Real Estate (and the Rail Improvements) throughout the stated term of this Operating Lease are essential to the funding mechanism for the Rail Project and the realization of the public purposes described herein.

WITNESSETH:

In consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

Section 1. Definitions; Interpretation.

(a) The terms defined in this Section shall for all purposes of this Operating Lease have the meanings herein specified unless the context otherwise requires.

"Ancillary Users" means any party that uses or has any interest in users of the Facilities of any kind whatsoever (including any subtenants, occupants, employees, agents, contractors, customers or invitees of NICTD).

"Authorized Officer of IFA" means the Chair of IFA or the Public Finance Director of the State of Indiana and, with reference to any act or document, also means any other person authorized by a resolution of IFA to perform such act or to sign such document.

"Authorized Officer of NICTD" means the President of NICTD and, with reference to any act or document, also means any other person authorized by a resolution of NICTD to perform such act or to sign such document.

"Authorized Officer of RDA" means the Chair or the Chief Executive Officer of RDA and, with reference to any act or document, also means any other person authorized by a resolution of RDA to perform such act or to sign such document.

"Available Revenues" means any available revenues of RDA, including, without limitation: (a) the portion of the annual payments to RDA from the Cities of Gary, East Chicago and Hammond and the Counties of Lake and Porter due under Indiana Code 6-3.6-6-9, Indiana Code 36-7.5-4-2 and Indiana Code 6-3.6-11-6(b); (b) amounts withheld by the auditor of State from certain municipalities within Lake County, as determined by the Indiana Department of Local Government Finance, and paid to the Secretary-Treasurer of RDA pursuant to Indiana Code 6-3.6-11-5.5; and (c) revenues derived from the Interlocal Agreements or from other actions taken by certain municipalities within Lake County offering to provide revenue to support and finance the Rail Project pursuant to Indiana Code 6-3.6-11-7. Notwithstanding the above definition, with respect to the initial series of IFA Bonds purchased by the State Treasurer as provided in IC 5-13-10.5-20, which are secured by rental payments to be made pursuant to the

RDA Available Revenues Master Lease Agreement (West Lake Project), to the extent provided in IC 36-7.5-4-21, it is understood that available revenues of RDA only include those sources described in clause (a) above.

"Biennium" means the biennium used for State budgetary and appropriation purposes.

"Bond Act" means Indiana Code 5-1.3, as amended or supplemented, or any successor thereto.

"Bond Trustee" means the trustee serving as such with respect to the IFA Bonds.

"Completion Certificate" for the Facilities or any portion thereof means a certificate (a) executed by an Authorized Officer of NICTD certifying that such Facilities or such portion thereof is available for use by RDA and (b) accepted by an Authorized Officer of RDA acknowledging that such Facilities or such portion thereof is available for use by RDA.

"Concurrence" means the written concurrence of the Authorized Officer of IFA and the Authorized Officer of RDA to the referred approval or other action of NICTD pursuant to the Governance Agreement, the Development Agreement or the Leases; *provided that*:

(a) concurrence may be withheld or delayed if the Authorized Officer of IFA and/or the Authorized Officer of RDA determines a referenced action (i) may adversely affect the Continuing Rent Obligation and (ii) be inconsistent with applicable laws (and the requirements of the Governance Agreement, the Development Agreement, the Leases and/or any documents related thereto);

(b) concurrence when given shall not be deemed to estop or otherwise waive IFA's and/or RDA's right to later assert or enforce any requirement under the Governance Agreement, the Development Agreement, the Leases and/or any documents related thereto, including IFA's and RDA's ability to seek claims, damages, losses and expenses, including attorneys' fees and other IFA and RDA costs arising out of or resulting from the action of NICTD for which concurrence has been given; and

(c) concurrence when given and later found to be contrary to any requirement under the Governance Agreement, the Development Agreement, the Leases and/or any documents related thereto shall not expose NICTD to a claim or assertion that such failure is, in and of itself, a failure to obtain a concurrence in the first instance and, as such, without having received a concurrence, a basis for a NICTD Event of Default. To the extent NICTD receives Concurrence under this Operating Lease it shall be able to rely upon such Concurrence.

"Continuing Rent Obligation" means (a) RDA's obligation under the Master Leases to continue to pay the Master Leases Rental and (b) NICTD's obligation under this Operating Lease to continue to pay the Operating Lease Rental, each without delay or diminution as to amount.

"Deposit Trustee" means the trustee bank acting as the Deposit Trustee under the Revenue Trust Fund Agreement.

"Development Agreement" means any development agreement entered into by NICTD, RDA and IFA for the purpose of governing the completion of the Rail Project in a manner consistent with and as contemplated by the Governance Agreement.

"Double Track Project" means the addition of an east/west rail line for a portion of the South Shore Line from Gary to Michigan City and related improvements, all as more fully described in Exhibit 1 of the Governance Agreement.

"Environmental Laws" means all federal, state and local statutes, common law principles, rules, regulations, ordinances, permits, licenses, written approvals, orders, writs, injunctions, judgments and consent decrees relating to pollution control, protection of environmental quality, or protection of the health or safety of workers or the public from exposure to Hazardous Materials, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or hazardous, toxic or dangerous substances, materials or wastes in the environment (including ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials. Without limiting the generality of the foregoing, "Environmental Laws" shall encompass any "Superfund" or "Superlien" Law (including those otherwise referenced in this definition) and each of the following statutes and the regulations promulgated thereunder, in any similar applicable federal, state or local law, rule or regulation, each as amended: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980; (ii) the Solid Waste Disposal Act; (iii) the Hazardous Materials Transportation Act; (iv) the Toxic Substances Control Act; (v) the Clean Water Act; (vi) the Clean Air Act; (vii) the Safe Drinking Water Act; (viii) the National Environmental Policy Act of 1969; (ix) the Superfund Amendments and Reauthorization Act of 1986; (x) Title III of the Superfund Amendments and Reauthorization Act of 1986; (xi) the Federal Insecticide, Fungicide and Rodenticide Act; (xii) provisions of the Occupational Safety and Health Act of 1970 relating to the handling of and exposure to Hazardous Materials; and (xiii) any state or local analogue to any of the foregoing.

"Facilities" means the Real Estate and the Rail Improvements.

"FFGA" means the grant agreement awarded by FTA for the Rail Project.

"Force Majeure" shall have the meaning ascribed to such term in the Governance Agreement.

"FTA" means the Federal Transit Administration.

"FTA Grant Reimbursements" means funds received from FTA as reimbursement for expenditures by the Parties for moneys spent on one or both of the projects constituting the Rail Project pursuant to the FFGA for the Rail Project.

"Governance Agreement" means the Governance Agreement effective as of [\_\_\_\_\_], 2018, by and between NICTD, RDA and the IFA, as from time to time amended or supplemented in accordance with its terms.

"Ground Lease" means the Ground Lease Agreement (West Lake Project) as the same may be amended, modified or supplemented by any amendments or modifications thereof and supplements thereto entered into in accordance with the provisions hereof.

"Hazardous Materials" means any hazardous, toxic or dangerous substance, material and waste, including petroleum and hydrocarbon compounds derived from petroleum (including naturally occurring or man-made petroleum and derivative hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including materials which include hazardous constituents), sewage, sludge, solvents and/or any other similar substances, materials or wastes that are or become regulated under any Environmental Law as hazardous or toxic.

"IC" means the Title, Article, Chapter and/or Section of the Indiana Code as referenced, and as such may be supplemented, amended or replaced from time to time.

"IFA" means the Indiana Finance Authority, a body politic and corporate, not a State agency, but an independent instrumentality exercising essential public functions, organized and existing under IC 5-1.2, or if said Indiana Finance Authority shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof.

"IFA Bonds" means one or more series of bonds, notes or other similar obligations issued under IC 5-1.3-1 *et seq.* to finance or refinance all or a portion of the costs for the Rail Project;

"Including" or "including" in this Operating Lease shall be construed as if followed by the phrase "without limitation" or "but not limited to".

"Independent Expert" means an independent registered architect, registered engineer, construction manager or contractor selected by NICTD with Concurrence.

"Lease Premises" means the leasehold estate and interests created by and pursuant to this Operating Lease, including, without limitation, the leasing of the Facilities, as the same may be amended and modified from time to time as needed for the Rail Project in the manner as provided for in the Leases.

"Leases" means, collectively, the Ground Lease, the Underlying Lease, the Master Leases and this Operating Lease.

"Master Leases" means the various leases from IFA to RDA in support of the IFA Bonds, including specifically the State Appropriation Master Lease Agreement (West Lake Project), the RDA Available Revenues Master Lease Agreement (West Lake Project) and the Federal Grant Anticipation Master Lease Agreement (West Lake Project), each as from time to time amended or supplemented by any amendment or supplement thereto, including any supplemental memorandum of lease recorded in connection therewith.

"Master Leases Rental" means the rental payments payable by RDA as provided in the Master Leases.

"Operating Lease" means this Operating Lease, as from time to time amended or supplemented by any amendment or supplement hereto, including any supplemental memorandum of lease recorded in connection therewith.

"Operating Lease Rental" means the rental payments payable by NICTD as provided in this Operating Lease.

"Parties" means IFA, NICTD and RDA.

"Permitted Encumbrances" means (a) this Operating Lease, the Ground Lease, the Underlying Lease, and the Master Leases, (b) utility, access and other easements, licenses and rights of way, covenants, conditions and restrictions, and other exceptions to title, which in each case will not materially and adversely affect the construction, development and operation of the Rail Project as contemplated by this Operating Lease or materially impair the interest of IFA, RDA or NICTD in, or its use of, the Facilities, (c) any liens to the extent permitted in this Operating Lease, and (d) any other liens which are not prohibited under this Operating Lease, but only if in the opinion of counsel satisfactory to IFA and the Bond Trustee, such liens do not materially impair the interest of IFA, RDA or NICTD in, or its use of, the Facilities.

"Permitted Uses" means any use permitted under the Governance Agreement, subject to Section 25(c) hereof.

"Rail Project" means the West Lake Corridor Project, as defined in IC 5-1.3-2-14 and IC 36-7.5-1-13.5.

"Rail Improvements" means the existing improvements located on the Real Estate, together with any new improvements constructed (or placed for use) on the Real Estate, whether as part of the Rail Project or otherwise.

"Real Estate" means the real property described on Exhibit A of this Operating Lease, as the same may be amended or modified in the manner provided herein and the other Leases.

"Revenue Trust Fund" means the development authority revenue fund established under the Revenue Trust Fund Agreement.

"Revenue Trust Fund Agreement" means the Revenue Trust Fund Agreement, dated as of August 1, 2018, entered into by and among RDA, IFA, NICTD, the Bond Trustee, and the Deposit Trustee in connection with the Revenue Trust Fund.

"State" means the State of Indiana.

"Supplemental Operating Lease" means any Operating Lease supplemental to this Operating Lease entered into in accordance herewith and substantially in the form set forth in Exhibit B.

"Trust Indenture" means the Trust Indentures to be entered into between IFA and the Bond Trustee relating to the IFA Bonds, and all supplements and amendments thereto.

"West Lake Corridor Project" means an approximately eight (8) mile new north/south passenger rail line connected to the existing South Shore Line located in Lake County, Indiana, with four stations from and including Hammond (Gateway Station) to and including Munster/Dyer (Main Street Station, including all property owned or leased by NICTD for the operation of the South Shore Line over the West Lake Corridor Project), all as more fully described in Exhibit 2 of the Governance Agreement.

(b) The terms "herein", "hereto", "hereunder" and all terms of similar import shall be deemed to refer to this Operating Lease as a whole rather than to any Section or Exhibit to this Operating Lease.

(c) Unless otherwise specified, references in this Operating Lease to (i) "Section \_\_\_" shall be deemed to refer to the Section of this Operating Lease bearing the number so specified, (ii) "Exhibit \_\_\_" shall be deemed to refer to the Exhibit of this Operating Lease bearing the letter or number so specified, and (iii) this "Operating Lease" means this Operating Lease and any exhibits and attachments hereto.

(d) Captions used for or in Sections and Exhibits of this Operating Lease are for convenience of reference only and shall not affect the construction of this Operating Lease.

## Section 2. Lease of Facilities.

(a) In consideration of certain payments and other terms and conditions herein specified, RDA does hereby lease, demise and let to NICTD the Facilities (such constituting a part of the Lease Premises), to have and to hold the same with all rights, privileges, easements and appurtenances thereunto belonging unto NICTD for a term beginning on the date hereof and ending on \_\_\_\_\_; provided, however, the term shall end earlier or later than such date in the event the conditions set forth in Section 18 hereof are met, in which case, the term shall end on such date (the "Term").

(b) The parties agree that the Rail Project will be undertaken on the Real Estate pursuant to the Governance Agreement and the Development Agreement. The parties acknowledge and agree that the Real Estate is available for use from and after the date hereof, and such availability for use (and the value thereof to RDA and NICTD) is not in any way diminished while the Rail Project is being undertaken. By one or more endorsements each recorded as soon as practical and as a Supplemental Operating Lease entered into in substantially the form set forth in Exhibit B, but in any event, when the Rail Improvements are complete and ready for use as part of the Rail Project, the parties shall revise or increase the real estate described in Exhibit A, if necessary to reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part of the Rail Project are constructed; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases. When complete, the parties shall set forth and make known the date or dates the Rail Improvements, as part of the Rail Project (or portions thereof), are complete and ready for use, which shall also be made available as the Lease Premises pursuant to this Operating Lease.

(c) NICTD hereby represents and warrants that, upon compliance with its obligations under Section 19 hereof, RDA will possess a good and indefeasible leasehold estate, subject only to Permitted Encumbrances, to all of the Real Estate, which includes real estate upon which the Rail Improvements that are part of the Rail Project are to be acquired, improved and constructed pursuant to the Governance Agreement and the Development Agreement, and NICTD warrants and will defend the same against all claims whatsoever not suffered or caused by the acts or omissions of RDA.

(d) Each of the Master Leases shall provide that in the event the Master Lease is terminated pursuant to the terms and conditions of such Master Lease following an event of default (as defined in such Master Lease) by RDA, this Operating Lease shall remain in full force and effect for the benefit of IFA (who upon termination of such Master Lease shall succeed to the rights, title and interest of RDA, as sublessor under this Operating Lease) and NICTD.

(e) NICTD shall not use the Facilities and shall use commercially reasonable efforts to not allow the Facilities to be used (including by any Ancillary Users) for any purpose or in any manner that would invalidate any policy of insurance now or hereafter carried in respect of the Facilities.

Section 3. Rental Payments; Supplements; Nature of Obligations.

(a) During the term of this Operating Lease, NICTD agrees to pay rentals to RDA without relief from valuation or appraisal laws and without a defense or set-off, counterclaim or recoupment, for the use of the Real Estate and all existing Rail Improvements (and if and when complete, and for the use of any Rail Improvements that are part of the Rail Project), in arrears in the monthly amount of One Dollar (\$1), together with such additional amounts as may be set forth in any Supplement Operating Lease, on or before the first (1<sup>st</sup>) business day of each calendar month (collectively, the "Operating Lease Rental").

(b) After the Commencement Date (as defined in the Master Leases), for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed or taken, so as to render such portion unavailable for use by NICTD, or shall for any other reason become unavailable for use by NICTD: (i) any rental payments due for such unavailable portion of the Lease Premises shall be abated during such unavailability by an amount equal to the product of the portion of (A) the rental payments otherwise due on such portion of the Lease Premises, times (B) a fraction of such rental payments, the numerator of which fraction equals the then estimated expenses incurred or to be incurred by RDA and allocable to such portion and the denominator of which fraction equals the then estimated expenses incurred or to be incurred by RDA and allocable to the Lease Premises; or (ii) RDA may add additional Lease Premises to this Operating Lease pursuant to a Supplemental Operating Lease so that there is no interruption in the lease rentals payable by NICTD as described in clause (a) above; provided that such additional Lease Premises are also added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.

(c) All rental obligations under this Operating Lease shall be deposited solely and exclusively into the Revenue Trust Fund.

(d) During the term of this Operating Lease, NICTD and RDA may enter into one or more Supplemental Operating Leases in the event NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities in substantially the form set forth in Exhibit B, so that such portions are within the boundaries of the Facilities.

(e) It is expressly understood and agreed by RDA and NICTD that the obligations of RDA and NICTD created by or arising out of this Operating Lease or of any amendments hereto shall not be, represent, or constitute an indebtedness of the State, IFA or RDA within the meaning or application of any constitutional limitation of the State or the laws of the State or a pledge of the faith or credit of the State, IFA or RDA.

Section 4. Damage or Destruction of Facilities; Failure to Construct.

(a) In the event the Facilities or any portion thereof shall be damaged or destroyed so as to render the same unfit for its intended use in the opinion of an Independent Expert, it shall then be the obligation of NICTD to cause the Facilities (or such portion thereof) to be restored and rebuilt as promptly as may be done, unavoidable strikes and other causes beyond the control of NICTD excepted, if in the opinion of an Independent Expert:

(i) the cost of such restoration or rebuilding does not exceed the amount of the proceeds received by the Trustee from the insurance provided for in Section 8 hereof, together with other moneys (I) IFA, at its discretion, may cause to be made available therefor pursuant to the terms of the Trust Indenture or the Revenue Trust Fund Agreement, as applicable, or (II) NICTD, at its discretion, may make available and deposit with the Trustee, and

(ii) such restoration or rebuilding can be sufficiently completed within the period of time covered by business income insurance provided for in Section 8 hereof in order to not adversely affect the Continuing Rent Obligation;

*provided, however,* that if NICTD shall fail to select such an Independent Expert (or fail to secure Concurrence in connection with the selection of such an Independent Expert) within ten (10) days after any request by RDA or IFA, then either RDA or IFA may select such Independent Expert to serve in such capacity at the sole cost and expense of NICTD.

(b) In the event such proceeds are insufficient to pay the restoration cost, such proceeds shall be applied as directed by RDA and IFA unless NICTD elects to make available and deposit with the Deposit Trustee or the Bond Trustee such shortfall and proceed with restoration in accordance with this Operating Lease.

Section 5. Nature of Operating Lease.

(a) It is expressly understood and agreed that this Operating Lease shall be what is known as an absolute net lease (i.e., that all costs and expenses in connection with the Facilities of any nature whatsoever shall be those of NICTD by reason of it being the tenant hereunder and all rent owing to RDA hereunder shall be net of all such costs and expenses) and that during the Term, NICTD shall be solely obligated to pay at its sole cost and expense, without reimbursement from or contribution by RDA, all costs of taxes and assessments, operations,

maintenance and use in connection with or relating to the Facilities, including all costs and expenses of decoration, maintenance, utility, janitorial and all other services, repair or replacement of all parts of the Facilities or improvement of the Facilities, including in the negotiation and maintenance of agreements with any Ancillary Users, subject to Section 12 hereof, in the manner provided in Section 7 hereof, except as otherwise provided in the Governance Agreement.

(b) NICTD shall cause any taxes due on the Rail Project to be timely paid to the applicable authorities, except to the extent of any good faith contests which have not yet been resolved, and it shall not assert any basis for taxation in respect of the Facilities that would negate or otherwise negatively impact any imposition or collection of taxes other than deductions, credits or other adjustments that would otherwise be applicable in the event the Leases were not in force or effect. The parties acknowledge and agree that this Operating Lease is, and is intended to be, a lease of real property including fixtures and mixed real and personal property (with any such personal property covered by this Operating Lease being incidental), and the Continuing Rent Obligation reflects lease payments which are made solely with respect to the lease of such real property.

(c) Except as otherwise provided in the Governance Agreement, NICTD shall retain all revenues from the operation of the Facilities, and except as otherwise provided in the Governance Agreement, neither IFA nor RDA shall have any responsibility to fund the ongoing costs, expenses and needs for operations, repairs, maintenance and replacements of or related to the Facilities.

Section 6. Nonliability of IFA or RDA. Except as otherwise provided in the Governance Agreement, neither IFA nor RDA shall be liable for damage caused by hidden defects or failure to keep the Facilities in repair and shall not be liable for any damage done or occasioned by or from any improvements, structures or equipment (including any stations, parking facilities, bridges, overpasses, crossings, switches, locomotives, railroad cars, utilities, plumbing, gas, water, boilers, steam or other pipes or sewage or the bursting or leaking of plumbing or heating fixtures or waste or soil pipe) in connection with the Facilities, nor for damage occasioned by natural events (whether occurring by age, wind, water, snow, ice, movements of earth, or otherwise). Neither IFA nor RDA shall be liable for any injury to NICTD, any Ancillary Users or any other person which injury occurs in, upon, about or near the Facilities howsoever arising. Neither IFA nor RDA shall be liable for damage to NICTD's property or to the property of any Ancillary Users or of any other person which may be located in, upon, about or near the Facilities. NICTD shall be responsible for preserving for the benefit of IFA and RDA usual and customary rights, claims and warranties against the persons or entities engaged to acquire, improve and construct any Facilities.

Section 7. Construction; Repairs and Maintenance; Alteration; Operations; Equipment or Furnishings.

(a) NICTD represents and covenants that the Rail Project has been or will be constructed in accordance with the terms and conditions of the Governance Agreement, the Development Agreement and applicable plans and specifications therefor with all reasonable speed and dispatch in accordance with the applicable approved plans and specifications therefor.

(b) NICTD shall keep and maintain the Facilities in good condition and repair in accordance with NICTD management practices in effect as of the date hereof and shall operate the Rail Project in an efficient and economical manner and in accordance with the Governance Agreement. NICTD shall make all necessary repairs, renewals, improvements and replacements to the Facilities and shall keep the Facilities in a clean and neat condition and in good and sound condition and repair, normal wear and tear excepted. The cost of such repairs, replacements and maintenance shall be (whether required because of the negligence, misuse or default of NICTD, any of its Ancillary Users, or otherwise) at NICTD's sole cost and expense, except as otherwise provided in the Governance Agreement.

(c) NICTD shall comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to NICTD, the Lease Premises and the Facilities. NICTD shall adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the Facilities and the operation thereof, and shall enforce such rules and regulations on a uniform basis.

(d) RDA shall comply with all valid statutes, rules, regulations, orders and directions of any legislative, administrative or judicial body applicable to RDA and with respect to RDA's rights and responsibilities for the Lease Premises and the Facilities. To the extent reasonably necessary, the RDA shall adopt and keep in force reasonable rules and regulations governing the use of the Lease Premises and the Facilities and the operation thereof, and shall enforce such rules and regulations on a uniform basis.

(e) NICTD shall have the right, at its sole cost and expense, without Concurrence, to make all alterations, modifications and additions and to do all demolition, remodeling and improvements it deems necessary or desirable to the Facilities, which do not materially reduce the rental value of the Lease Premises or adversely affect (i) the Continuing Rent Obligation and (ii) each referenced obligation that is required to be met by NICTD to be consistent with applicable law (including the Bond Act) and the requirements of the Governance Agreement, the Development Agreement, the Ground Lease, the Underlying Lease, the Master Leases, this Operating Lease and/or any documents related thereto. NICTD shall be liable to repair any damage to the Facilities resulting from such work.

(f) So long as this Operating Lease is in effect, NICTD may at any time and from time to time, at its sole cost and expense, install, modify, remove or replace items of moveable machinery, equipment, furnishings and other personalty in and upon the Facilities. All such personal property shall remain the sole property of NICTD, in which neither IFA nor RDA shall have any interest, and may be installed, modified, removed or replaced by NICTD at any time; *provided* that if such installation, modification, removal or replacement adversely affects (i) the Continuing Rent Obligation or (ii) any referenced obligation that is required to be met by NICTD to be consistent with applicable law (including the Bond Act) and the requirements of the Governance Agreement, the Development Agreement, the Ground Lease, the Underlying Lease, the Master Leases, this Operating Lease and/or any documents related thereto, then NICTD shall either: (y) repair and restore any and all damage to the Facilities resulting from the installation, modification, removal or replacement of any such property; or (z) compensate IFA and RDA for any loss in value to the Lease Premises (including any diminishment in the Master Leases Rental

and Operating Lease Rental) resulting from the installation, modification or removal of any such property.

(g) NICTD shall maintain or cause to be maintained such performance bonds or performance insurance (in a manner consistent with the Governance Agreement) with respect to contracts it may enter into for construction of the Rail Improvements as are usually maintained by those constructing improvements and facilities similar to the Rail Improvements. If performance of any contract for construction of the Rail Improvements is not completed in accordance with its terms and, in the opinion of a registered engineer selected by NICTD and acceptable to IFA and RDA, the cost of completion of such performance shall not exceed the amount of proceeds from any performance bond or performance insurance to be received by reason of such noncompletion of performance and other amounts available therefor, NICTD shall complete or cause to be completed such performance in the manner provided in, and subject to the conditions of, the Governance Agreement. The proceeds of any performance bond paid on account of such noncompletion of performance shall be made available for, and to the extent necessary shall be applied to, the cost of such construction.

Section 8. Insurance.

(a) NICTD, in the manner as provided in the Governance Agreement prior to completion of the Rail Project, and thereafter at its sole cost and expense, shall, during the full term of this Operating Lease, keep the Facilities insured against physical loss or damage, however caused, and otherwise in the manner and on a basis required in the Governance Agreement and the Development Agreement and consistent with commercially reasonable practices and only with such exceptions as are ordinarily required by insurers of rail lines of a similar type (as provided by an industry standard special cause of loss (or its equivalent) property insurance policy, which insurance shall not exclude flood or earthquake, but may provide for sublimits therefor), with good and responsible insurance companies. Such policies shall include terrorism coverage so long as the Terrorism Risk Insurance Program Reauthorization Act of 2015 [15 USC 6701] continues in its present form or an equivalent federal insurance program is available to NICTD. Such insurance shall be in an amount at least equal to the full replacement cost of such Facilities as reasonably determined by NICTD in consultation with an insurance consultant approved by RDA from and after the date the IFA Bonds are issued by IFA; *provided*, any reduction in excess of ten percent (10%) from the amount carried on the date this Operating Lease is entered into (including any reduction from any existing sublimits) shall only be permitted with Concurrence. In no event shall the insurance be in an amount which causes NICTD to be a co-insurer for the Facilities; *provided*, it is agreed that the provision of sublimits for earthquake and flood shall not be deemed to cause NICTD to be a co-insurer; *provided further* that such insurance may cover properties of NICTD other than the Facilities. Such insurance may contain a provision for a deductible in an amount that is customary and commercially reasonable, but not more than \$500,000 or such higher amount as from time to time determined by NICTD with Concurrence. After the occurrence of any insured casualty, NICTD agrees to pay the deductible amount of any loss to the Bond Trustee or such party directed by the Bond Trustee, as applicable, within ten (10) days following any request so made by IFA or RDA. A blanket property insurance form may be used if the insurance payable in respect of loss related to the Facilities is not less than the amount required by this Section and the

insurance proceeds related to damage to or destruction of the Facilities are payable to the Bond Trustee for the IFA Bonds.

(b) During the full term of this Operating Lease, NICTD, in the manner as provided in the Governance Agreement prior to completion of the Rail Project, and thereafter at its sole cost and expense, shall also, maintain business income insurance in an amount at least equal to the Operating Lease Rental on the Lease Premises leased by NICTD under this Operating Lease for a period of (2) years against physical loss or damage of the type insured against pursuant to the preceding requirements of this Section. Such business income insurance policies shall be for the benefit of IFA, RDA, and the Bond Trustee and shall name the Bond Trustee for the IFA Bonds as loss payee, which payment to such Bond Trustee may be limited to circumstances where Master Leases Rental is not made by RDA pursuant to a Master Lease.

(c) After the occurrence of any insured casualty related to the Facilities, NICTD shall give notice to the Bond Trustee, IFA and RDA. Such notice shall be given within five (5) days following such casualty and shall tentatively describe the nature of the casualty together with sufficient additional information to permit IFA and RDA to ascertain NICTD's plans for addressing such loss or damage (and meeting its obligations under this Operating Lease, including the amount NICTD plans to reserve to meet the requirements thereof that result from any deductible applicable under its insurance policies).

(d) In the event that an insurance program is developed by NICTD and approved by RDA and IFA as provided in the Governance Agreement, that insurance program and the requirements thereof shall be substituted herein as the insurance coverage requirements for this Operating Lease to the extent in conflict herewith or in addition hereto.

Section 9. Use of Insurance and Condemnation Proceeds.

(a) If all or any portion of the Facilities shall be damaged or destroyed or taken, NICTD shall, as expeditiously as possible, continuously and diligently prosecute, or cause to be prosecuted, repair, reconstruction or replacement thereof until completion. Within one hundred twenty (120) days after the occurrence of an event of damage or destruction to the Facilities or a taking thereof, NICTD, through any Authorized Officer of the NICTD, shall deliver to RDA and the Bond Trustee the written opinion of engineer selected by NICTD and reasonably acceptable to RDA and IFA stating whether or not the conditions set forth above with respect thereto are satisfied. The proceeds of any insurance paid on account of such damage or destruction or taking (other than any rent loss insurance) shall be made available for, and to the extent necessary shall be applied to, the cost of such repair, reconstruction or replacement, or otherwise in accordance with the terms and conditions of this Operating Lease.

(b) Proceeds of insurance against damage to or destruction of the Facilities which are paid to the Bond Trustee as described herein shall be held by the Bond Trustee pursuant to the applicable Trust Indenture and used by NICTD in accordance with the provisions of this Operating Lease, the Underlying Lease, the Master Leases, this Operating Lease, the Governance Agreement and such Trust Indenture. Proceeds of any condemnation of the Facilities (or portion thereof) shall be paid to the Bond Trustee and held by the Bond Trustee pursuant to the applicable Trust Indenture and used by NICTD in accordance with the provisions of this

Operating Lease, the Ground Lease, the Underlying Lease, the Master Leases, the Governance Agreement and such Trust Indenture.

Section 10. Liability Insurance. NICTD shall, at all times during the full term of this Operating Lease, keep in effect Commercial General Liability Insurance (which insurance shall not exclude blanket contractual liability, broad form property damage, personal injury, or fire damage coverage) covering the Facilities and NICTD's use thereof against claims for bodily injury and property damage, and insuring NICTD, IFA and RDA in amounts and in the manner required by the Governance Agreement and the Development Agreement. Such policies shall include terrorism coverage so long as the Terrorism Risk Insurance Program Reauthorization Act of 2015 [15 USC 6701] continues in its present form or an equivalent federal insurance program is available to NICTD. NICTD shall maintain for each policy year during the term of this Operating Lease aggregate limits for liability coverages of not less than fifty percent (50%) of liability coverage amounts as in effect on the date this Operating Lease is entered into unless otherwise approved by RDA; *provided* that if such policy limits are not reasonably available in the insurance marketplace, then NICTD may reduce such aggregate coverage amounts to the highest such amounts as are reasonably available in the insurance marketplace existing from time to time. NICTD shall make IFA, RDA and the State additional insureds on such policies.

Section 11. General Insurance Provisions. All insurance policies required by Sections 8 and 10 hereof shall be issued in a manner and with coverages consistent with those provided in the Ground Lease and in all instances, in a manner as provided in the Governance Agreement and the Development Agreement, by good and responsible insurance companies, each of which companies, selected by NICTD and reasonably approved by RDA, shall be rated at least "A-VII" (or an equivalent rating if such rating scale is discontinued or changed) by A.M. Best & Company (or by an equivalent rating service if A.M. Best & Company is no longer providing such types of ratings) and shall be countersigned by an agent of the insurer who is a licensed agent in the State. Such policies, or copies thereof, shall be held by NICTD as standing information for review by IFA, RDA and the Bond Trustee; *provided* that such policies shall be available for review by IFA, RDA and the Bond Trustee upon request, and shall be updated as changes are made to such policies. Such policies shall be subject to the requirement that in the event of a material reduction in policy limits or elimination of any coverages, NICTD will notify IFA, RDA and the Bond Trustee in writing by electronic or other means, with such notification including a description of the coverages so reduced or eliminated. If, at any time, NICTD fails to maintain insurance in accordance with Sections 8 and 10 hereof, such insurance may be obtained by IFA or RDA, or may be obtained by the Bond Trustee, and the amount paid for such insurance shall be payable by NICTD under this Operating Lease; *provided, however*, that neither IFA, RDA nor the Bond Trustee shall be under any obligation to obtain such insurance, and any action or non-action of RDA, IFA or the Bond Trustee in this regard shall not relieve NICTD of any consequences of a default in failing to obtain such insurance. The Bond Trustee shall be the loss payee on all casualty insurance required by this Operating Lease that becomes payable in respect of claims related to the Facilities.

Section 12. General Covenants.

(a) NICTD covenants that, except for Permitted Encumbrances and any liens, charges, encumbrances, or security interests created by an act or omission of RDA and/or IFA, it

will not mortgage, impose any lien or claim upon, or otherwise encumber the Lease Premises (whether actual, contingent or otherwise), or permit any mortgage, lien, claim or encumbrance to exist thereon, and that it shall use and maintain the Facilities in material compliance with the laws and ordinances of the United States of America, the State, and all other proper governmental authorities.

(b) Each party hereto agrees that it will, at the request of the other party, execute and deliver to or upon the request of the other party such instrument or instruments as may be reasonably required by such party in order to assure or confirm NICTD's interest in the Lease Premises pursuant to the terms hereof and shall also deliver, from time to time, such instrument or instruments as may be reasonably requested by the other party or any tenant or subtenant of NICTD with respect to the covenant of quiet enjoyment herein.

(c) RDA covenants that, except for Permitted Encumbrances and any liens, charges, encumbrances, or security interests created by an act or omission of NICTD and/or IFA, it will not mortgage, impose any lien or claim upon, or otherwise encumber the Lease Premises (whether actual, contingent or otherwise), or permit any mortgage, lien, claim or encumbrance to exist thereon, and that it shall use and maintain the Facilities in material compliance with the laws and ordinances of the United States of America, the State, and all other proper governmental authorities.

Section 13. Covenants Regarding the Bond Act; IFA Bonds. NICTD shall timely comply with all requirements of NICTD created by the Bond Act, the Governance Agreement, the Development Agreement and any agreement or certificate executed by NICTD in connection with the issuance of the IFA Bonds.

Section 14. Utility Service. NICTD agrees to pay or cause to be paid all charges for (a) sewer, gas, water, electricity, light, heat or power utilities and services, (b) telephonic, communication and other information services, (c) other utility and like services, and (d) regulatory, track and freight fees and other fees, costs and expenses associated with the use and operation of the Facilities that are used, rendered or supplied upon or in connection with the Facilities throughout the term of this Operating Lease.

Section 15. Environmental Laws Covenants.

(a) With respect to the Facilities, (i) NICTD shall at all times comply and follow commercially reasonable business practice to cause others to comply, in all material respects, with all Environmental Laws and all licenses, permits, certificates, approvals and similar authorizations issued to NICTD thereunder, and such operations shall not give rise to any liability pursuant to any Environmental Law, (ii) NICTD shall promptly notify RDA and IFA upon becoming aware of any investigation, proceeding, complaint, order, directive, claim, citation or written notice by any governmental authority or any other Person arising under or relating to any violation of any Environmental Law that is pending against NICTD or threatened in writing against NICTD and shall take prompt and appropriate actions to respond thereto and to cure such violation (if any) and (iii) NICTD shall promptly notify RDA and IFA upon becoming aware of any non-compliance with, or violation of, the requirements of any Environmental Law by NICTD in any material respect, or the release, spill, or discharge, threatened or actual, of any

Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material or any other environmental, health or safety matter, which affects or gives rise to a material liability upon NICTD or any liability upon IFA or RDA.

(b) NICTD shall not cause or permit the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Materials on, under or about the Facilities, or the transportation to or from the Facilities of any Hazardous Materials, except as necessary and appropriate for its Permitted Uses, in which case, the use, storage or disposal of such Hazardous Substances shall be performed in compliance with the Environmental Laws and the standards prevailing in the railroad industry and at comparable facilities. Notwithstanding anything contained herein to the contrary, IFA and RDA shall not have any liability to NICTD resulting from any conditions existing, or events occurring, or any Hazardous Materials existing or generated, at, in, on, under or in connection with this Operating Lease or the Facilities.

Section 16. Indemnity by NICTD. NICTD shall release, protect, defend, indemnify and hold harmless the RDA, IFA, the Bond Trustee, the Deposit Trustee, and their respective agents, employees, representatives and consultants, from and against any and all claims, causes of action, suits, judgments, demands, and/or losses, in each case if asserted or incurred by or awarded to any third party, arising out of or relating to or resulting from (a) NICTD's design, construction or operation of the Rail Projects or the South Shore Line, (b) any act, omission, negligence, or willful misconduct of NICTD, any of its Ancillary Users or anyone acting under its control or for whom it is legally responsible (c) failure of NICTD, or anyone acting under its control or for whom it is legally responsible, to perform or observe any requirement or obligation imposed by this Operating Lease and (d) arising out of any other act or occurrence within the Facilities. NICTD's indemnity obligation shall not extend to: (i) any third party claim to the extent directly caused by the negligence, recklessness, willful misconduct, or breach of any material obligation under this Operating Lease or the Governance Agreement by IFA or RDA, or (ii) any claims, causes of action, suits, judgments, demands, and/or losses resulting from any action of the RDA or IFA during an Operations Step-In Period or resulting from any actions taken by the RDA or IFA after the exercise of any Construction Period Step-In Rights; *provided*, however, that nothing herein shall relieve NICTD of responsibility to pay up to the Maximum NICTD Excess Cost Contribution for Excess Construction Costs irrespective of the exercise of Construction Period Step-In Rights. The RDA and IFA shall have no obligation to indemnify NICTD.

Section 17. No Broker. NICTD hereby represents and warrants that no brokers or third-party involved in the negotiation and execution of this Operating Lease is entitled, as a result of the actions of the respective party, to a commission or other fee resulting from the execution of this Operating Lease.

Section 18. Transfer to NICTD. To the extent provided in the Governance Agreement, upon the later of the termination of the Governance Agreement and the final and full payment of all IFA Bonds, this Operating Lease shall terminate.

Section 19. Title to Real Estate.

(a) NICTD shall cause a final, fully paid, leasehold title insurance policy to be issued for the benefit of RDA by no later than the date the IFA Bonds are to be issued by IFA. In the event NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities, then by no later than the date as of which construction of any such portion commences, NICTD shall cause (i) an endorsement to be issued to, and on substantially the same terms as, the leasehold title insurance policy referenced in the prior sentence (or an additional final, fully paid, leasehold title insurance policy to be issued on substantially the same terms as the leasehold title insurance policy referenced in the prior sentence) to identify and insure thereunder any such necessary increase in the real estate described in Exhibit A and (ii) a Supplemental Operating Lease to be entered into in substantially the form set forth in Exhibit B in respect of such Real Estate; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.

(b) NICTD represents and warrants that it has a good and indefeasible estate in fee simple to all of the Real Estate, subject only to Permitted Encumbrances.

Section 20. Defaults; Remedies.

(a) If there is any NICTD uncured Event of Default (including any default in the observance of any other covenant, agreement or condition contained in this Operating Lease) (each an "Event of Default"), RDA may proceed to protect and enforce its rights, either at law or in equity, by suit, action, mandamus or other proceedings, whether for specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy (as contained in the Governance Agreement as may relate to this Operating Lease and such Event of Default); *provided* that all such rights and remedies taken in respect of this Operating Lease and any such Event of Default shall only be undertaken and pursued by RDA in strict conformity with this Section and the requirements and limitations set forth in the Governance Agreement.

(b) Except for extensions of time resulting from a Force Majeure event that are allowed in the Governance Agreement, time is of the essence of each term and provision of this Operating Lease to be observed by NICTD hereunder.

(c) If RDA shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Operating Lease, NICTD may pursue a claim for specific performance. If RDA shall fail to perform any term, condition, covenant or obligation required to be performed by it under this Operating Lease and if NICTD shall, as a consequence thereof, recover a money judgment against RDA and/or IFA, NICTD agrees that (i) it shall look solely to RDA's and IFA's right, title and interest in and to the Lease Premises (which shall not include any right to set-off related to any payment due to RDA or IFA as required by the Governance Agreement, the Development Agreement, this Operating Lease, the Underlying Lease, the Master Leases, the Ground Lease and/or any documents related thereto) for the collection of such judgment, (ii) it shall not look to any other assets of RDA and/or IFA in the levy, execution or other process for the satisfaction of NICTD's judgment, and (iii) it shall not enforce any execution or other process for the satisfaction of NICTD's judgment, unless such does not: (A) materially reduce the rental value of the Lease Premises; (B) adversely affect the Continuing

Rent Obligation; or (C) materially and adversely affect any obligation that is required to be met by NICTD pursuant to applicable laws (including the Bond Act) and requirements of the Governance Agreement, the Development Agreement, this Operating Lease the Underlying Lease, the Master Leases, the Ground Lease and/or any documents related thereto.

(d) Neither party's failure or delay in exercising any of its rights or remedies or other provisions of this Operating Lease shall constitute a waiver thereof or affect its right thereafter to exercise or enforce such right or remedy or other provision. No waiver of any default shall be deemed to be a waiver of any other default. RDA's receipt of less than the full amount due as herein provided shall not be construed to be other than a payment on account of such amount then due, nor shall any statement on NICTD's check or any letter accompanying NICTD's check be deemed an accord and satisfaction. No act or omission by RDA (or IFA) or their respective employees or agents during the term of this Operating Lease shall be deemed an acceptance of a surrender of the Lease Premises hereunder, and no agreement to accept such a surrender shall be valid unless in writing and signed by RDA and IFA.

(e) Notwithstanding anything herein, IFA may proceed to protect and enforce any rights or interests of RDA or IFA under this Operating Lease in its own name or on behalf of RDA in the name of RDA in its place and stead.

Section 21. Notices.

(a) All notices, certificates, requests or other communications required hereunder shall be sufficient only if given in writing, prior to the matter requiring notice and shall be deemed given (i) one (1) business day after being deposited for next day delivery; (ii) three (3) business days after mailing when mailed by registered or certified mail, return receipt requested, postage prepaid, or (iii) the same day if hand delivered (or if sent by both facsimile and email) during a business day, addressed as follows:

To RDA: Northwest Indiana Regional Development Authority  
9800 Connecticut Drive  
Crown Point, IN 46307  
Attention: President

With a Copy to: Ice Miller LLP  
One American Square 2900  
Indianapolis, IN 46282

To IFA: Indiana Finance Authority  
1 North Capitol, Suite 900  
Indianapolis, Indiana 46204  
Attention: Public Finance Director of the State of Indiana  
and General Counsel  
Facsimile (317) 232-6786 / Electronic mail (to  
DHuge@ifa.IN.gov; and ASeiwert@ifa.IN.gov)

To NICTD: Northern Indiana Commuter Transportation District

33 East U.S. Highway 12  
Chesterton, Indiana 46304  
Attention: President and/or Chief Executive Officer

With a Copy to: Northern Indiana Commuter Transportation District  
33 E. US Highway 12  
Chesterton, IN 46304  
Attention: Office of General Counsel

(b) Any party hereunder may, by notice given hereunder, designate any further or different addressees to which subsequent notices, certificates, requests or other communications shall be sent.

Section 22. Construction of Covenants. All provisions contained herein shall be construed in accordance with the provisions of the Bond Act, the Governance Agreement and the Development Agreement and to the extent of any material inconsistencies between the covenants and agreements in this Operating Lease, the Governance Agreement, and the Development Agreement and the provisions of the Bond Act, the provisions of the Bond Act, then the Governance Agreement, then this Operating Lease, and then the Development Agreement, shall be deemed to be controlling and binding upon the parties.

Section 23. Supplemental Operating Leases. RDA and NICTD may, from time to time hereafter, enter into one or more Supplemental Operating Leases, each of which: (a) shall provide that all covenants contained in this Operating Lease shall be unitary and include all parts of the Lease Premises, whether leased pursuant to this original Operating Lease or pursuant to any Supplemental Operating Lease (*provided* that the foregoing shall not limit or restrict the parties from having differing covenants and obligations applicable to any Supplemental Operating Leases related to portions of the Rail Project NICTD proposes to be constructed that are not within the existing boundaries of the Facilities); and (b) may contain such other covenants and agreements as the parties thereto agree upon.

Section 24. No Personal Liability. No recourse shall be had for any payment due under this Operating Lease or for any claim based thereon or upon any obligation, covenant or agreement in this Operating Lease contained against any past, present or future member, officer, employee, agent or official of IFA, RDA or NICTD, or any successor thereof, either directly or through IFA, RDA or NICTD, or any successor thereof, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability for any such person is hereby expressly waived and released as a condition of and consideration for the execution of this Operating Lease and issuance of the IFA Bonds.

Section 25. Successors or Assigns; Use Restrictions.

(a) All covenants of this Operating Lease, whether by RDA or NICTD, shall inure to the benefit of and be binding upon the permitted successors and assigns of the respective parties hereto. This Operating Lease shall not be assigned by NICTD without the prior written consent of RDA and IFA, and in such event the assignor shall not be relieved of its obligations hereunder unless permitted by RDA and IFA. This Operating Lease may be assigned by RDA to IFA

without the prior written consent of NICTD as and to the extent permitted by the Bond Act. Any assignment in contravention of this Section shall be null and void *ab initio*.

(b) Notwithstanding any other provision of this Operating Lease to the contrary, NICTD covenants that it: (a) will not use or permit the Facilities or any portion thereof for any private business use within the meaning of Section 141(b)(6) of the Internal Revenue Code of 1986, as amended from time to time, without the prior written consent of an Authorized Officer of IFA, which consent shall not be unreasonably withheld, and (b) will comply with Section 148(f) of the Internal Revenue Code of 1986, as amended from time to time. Any agreement entered into by NICTD in violation of this Section 25 shall be of no force or effect and shall not convey any rights or impose any obligation in respect to it, at law or in equity.

(c) Requests for consent to private business use shall be sent in writing by NICTD to IFA and RDA. Each such request shall include a final draft of the proposed conveyance, lease, sublease, management or incentive payment contract, license or other agreement that may give rise to such private business use, together with a description of the timing and the rationale for entering into such agreement (the "Proposed Private Business Use"). IFA and RDA shall conduct their review and approve or reject, in writing, such request within 30 days of receipt. If no response is made to a request for consent to private business use within 30 days of receipt, then NICTD shall provide additional written notice to IFA and RDA that the Proposed Private Business Use will be deemed to be approved. If no response to this additional written notice is received within three business days of receipt of the additional written notice by IFA and RDA, then the request shall be deemed approved. In the event a request for consent to private business use is deemed approved, NICTD shall have the right to proceed as though consent to the Proposed Private Business Use was expressly provided by IFA and RDA. In any event, upon the execution and delivery by NICTD of any such agreement, NICTD shall provide IFA and RDA a copy of such executed agreement within 10 business days of the execution thereof.

Section 26. Validity. All terms, covenants and conditions contained in this Operating Lease shall include all parts of the Facilities, whether leased pursuant to the original Operating Lease or pursuant to any Supplemental Operating Lease thereto.

Section 27. Severability; Complete Agreement; Counterparts; Survival of Terms; Governing Law; Etc.

(a) All the covenants, agreements, terms and conditions required under the laws of the State, including the Bond Act, to be included in any lease entered into under Indiana Code 5-1.3-5 are incorporated herein by this reference.

(b) In case any section or provision of this Operating Lease, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Operating Lease, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Operating Lease or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Operating Lease, which shall be construed and enforced as if that illegal, invalid or inoperable portion were not contained herein. Any such illegality, invalidity or

inoperability of any application thereof shall not affect any legal, valid and operable application thereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

(c) This Operating Lease represents the entire agreement between RDA and NICTD covering everything agreed upon or understood in the creation of the estate created by this Operating Lease and related transactional matters; *provided*, however, that the parties contemplate and agree that the provisions of the Governance Agreement, the Development Agreement, the other Leases and/or any documents related thereto contain related undertakings and such shall be given their full meaning and effect. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition shall be made to this Operating Lease except by a written agreement executed by RDA and NICTD.

(d) The parties each acknowledge that the terms and conditions of this Operating Lease have been the subject of active and complete negotiations represented by competent professional counsel and advisors, and that such terms and conditions should not be construed in favor of or against any party by reason of the extent to which any party or its professional counsel and advisors participated in the preparation of this Operating Lease.

(e) This Operating Lease may be executed in duplicate counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

(f) The covenants and obligations under Sections 6, 13, 15, 16, 20, and 24 hereof shall survive the expiration or earlier termination of this Operating Lease.

(g) This Operating Lease shall be construed according to, and subject to, the laws of the State.

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IN WITNESS WHEREOF, the parties hereto have caused this Operating Lease to be executed for and on their behalf as of the day and year first hereinabove written.

**"RDA"**

**NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY, AS  
LESSOR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northwest Indiana Regional Development Authority ("RDA"), and acknowledged the execution of the foregoing Operating Lease Agreement (West Lake Project) for and on behalf of RDA.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)  
Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

\_\_\_\_\_

**"NICTD"**

**NORTHERN INDIANA COMMUTER  
TRANSPORTATION DISTRICT, AS  
LESSEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northern Indiana Commuter Transportation District ("NICTD"), and acknowledged the execution of the foregoing Operating Lease Agreement (West Lake Project) for and on behalf of NICTD.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

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*This instrument prepared by: Philip C Genetos, Ice Miller LLP, One American Square, Suite 2900, Indianapolis, IN 46282*

*I affirm under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law. Philip C Genetos*

**EXHIBIT A**

**LEGAL DESCRIPTION AND MAP OF THE REAL ESTATE**

**Map of the Real Estate.** Real property in \_\_\_\_\_  
\_\_\_\_\_, as depicted as follows:

[End of Exhibit A]

**EXHIBIT B**  
**FORM OF**  
**SUPPLEMENTAL OPERATING LEASE AGREEMENT (WEST LAKE PROJECT)**  
**BETWEEN**  
**NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY**  
**AND**  
**NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT**

SUPPLEMENTAL OPERATING LEASE AGREEMENT (WEST LAKE PROJECT)  
BETWEEN  
NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY  
AND  
NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT

This SUPPLEMENTAL OPERATING LEASE AGREEMENT (WEST LAKE PROJECT) (this "Supplemental Operating Lease"), entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the NORTHWEST INDIANA REGIONAL DEVELOPMENT AUTHORITY, a separate body corporate and politic formed pursuant to Indiana Code 36-7, as supplemented and amended from time to time ("RDA"), and the NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT, a commuter transportation district and a municipal corporation formed pursuant to Indiana Code 8-5-15, as supplemented and amended from time to time ("NICTD").

WITNESSETH:

WHEREAS, NICTD entered into an Operating Lease Agreement (West Lake Project) with RDA dated as of \_\_\_\_\_, 20\_\_ (the "Operating Lease"); and

WHEREAS, all terms not otherwise defined in this Supplemental Operating Lease shall have the meanings ascribed to them in the Operating Lease; and

[WHEREAS, it is provided in the Operating Lease that after the Commencement Date, for any portion of the Lease Premises, in the event such portion shall be damaged or destroyed or taken, so as to render such portion unavailable for use by NICTD, or shall for any other reason become unavailable for use by NICTD, RDA may add additional Lease Premises to the Operating Lease pursuant to a Supplemental Operating Lease so that there is no interruption in the lease rentals payable by NICTD to RDA pursuant to the Operating Lease; provided that such additional Lease Premises are also added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Operating Lease that in the event NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities, then by no later than the date as of which construction of any such portions commences, NICTD shall cause a Supplemental Operating Lease to be entered into for the purpose of adding to the Real Estate the pertinent real estate on which such portions of the Rail Project shall be located; provided that such additional Real Estate is also added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Operating Lease that when the Rail Improvements are complete and ready for use as part of the Rail Project, the parties shall revise and increase the real estate described in Exhibit A to the Operating Lease, if necessary to reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part of the Rail Project have been constructed; provided that such additional Real Estate is also added

to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases; and]

[WHEREAS, it is provided in the Operating Lease that RDA and NICTD may enter into one or more Supplemental Operating Leases, each of which: (1) shall provide that all covenants contained in the Operating Lease shall be unitary and include all parts of the Lease Premises, whether leased pursuant to the Operating Lease or pursuant to any Supplemental Operating Lease (*provided* that the foregoing shall not limit or restrict the parties from having differing covenants and obligations applicable to any Supplemental Operating Leases related to portions of the Rail Project NICTD proposes to be constructed that are not within the existing boundaries of the Facilities); and (2) may contain such other covenants and agreements as the parties thereto agree upon.]

NOW, THEREFORE, IT IS HEREBY AGREED, CERTIFIED AND STIPULATED by the undersigned as follows:

[Section 1. Addition to Real Estate After Commencement Date. Certain portions of the Lease Premises have been damaged or destroyed, thereby rendering such portions unavailable for use by NICTD, or have otherwise become unavailable for use by NICTD. NICTD has added additional Lease Premises to the Ground Lease pursuant to a Supplemental Ground Lease. Therefore, the Lease Premises set forth in Exhibit A to the Operating Lease shall be hereafter amended to read as set forth in Appendix I attached hereto, so that RDA may lease such additional Lease Premises to NICTD pursuant to this Supplemental Operating Lease, thereby resulting in no interruption in the lease rentals payable by NICTD to RDA pursuant to the Operating Lease. Such additional Lease Premises are also being added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.

[Section   . Addition to Real Estate Prior to Construction. NICTD proposes to construct portions of the Rail Project that are not within the boundaries of the Facilities set forth in Exhibit A to the Operating Lease. Therefore, the boundaries of the Facilities set forth in Exhibit A to the Operating Lease shall be hereafter amended to read as set forth in Appendix I attached hereto, which revised boundaries shall include the pertinent real estate on which such portions of the Rail Project shall be located. Such additional Real Estate is also being added to the Underlying Lease, one or more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.]

[Section   . Addition to Real Estate After Construction. Certain Rail Improvements are now complete and ready for use as part of the Rail Project, and it is now necessary to revise or increase the real estate described in Exhibit A to the Operating Lease, because such Exhibit A does not reflect the final site location acquired for the Rail Project and upon which the Rail Improvements as part of the Rail Project have been constructed. Therefore, for such purpose, Exhibit A to the Operating Lease shall be hereafter amended to read as set forth in Appendix I attached hereto. Such additional Real Estate is also being added to the Underlying Lease, one or

more of the Master Leases, and the Ground Lease, thereby resulting in no interruption in the lease rentals payable by RDA to IFA pursuant to the Master Leases.]

Section \_. All covenants contained in the Operating Lease, including this Supplemental Operating Lease, shall be unitary and include all parts of the Lease Premises, whether leased pursuant to the Operating Lease or pursuant to any Supplemental Operating Lease.

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IN WITNESS WHEREOF, the undersigned have caused this Supplemental Operating Lease to be executed for and on their behalf as of the day and year first above written.

"RDA"

NORTHWEST INDIANA REGIONAL  
DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

"NICTD"

NORTHERN INDIANA COMMUTER  
TRANSPORTATION DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

This instrument prepared by: \_\_\_\_\_



STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northwest Indiana Regional Development Authority ("RDA"), and acknowledged the execution of the foregoing Supplemental Operating Lease Agreement (West Lake Project) for and on behalf of RDA.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

\_\_\_\_\_

[REMAINDER OF PAGE LEFT BLANK]

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known by me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of the Northern Indiana Commuter Transportation District ("NICTD"), and acknowledged the execution of the foregoing Supplemental Operating Lease Agreement (West Lake Project) for and on behalf of NICTD.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

My Commission expires:

My county of residence is:

\_\_\_\_\_

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[APPENDIX I

LEGAL DESCRIPTION AND MAP OF THE REAL ESTATE]

**EXHIBIT 10**

**SSI Policy**

**NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT**  
**Sensitive Security Information Policy & Procedures**

*[ADOPTED BY NICTD BOARD OF TRUSTEES – January 26, 2018]*

**1. Purpose**

The purpose of this document is to establish a policy and operating procedures for the maintenance, safeguarding and disclosure of records and information relating to the systems, operations, or facilities of the Northern Indiana Commuter Transportation District (“NICTD”) determined to contain Sensitive Security Information as defined by federal regulations and law, as well as to control and govern the disclosure of plans, procedures, and other documents whose dissemination must be controlled and protected for security reasons (“Policy”).

This Policy shall not alleviate responsibility of a covered person as defined herein from otherwise complying with 49 CFR 15 and 1520 and any other controlling federal law or regulation.

**2. Applicability to “Covered Persons”**

A list of who is a “covered person” as defined by federal law is included in 49 CFR 15.7 and 1520.7 and is incorporated into the Policy. The following list, although not comprehensive, identifies “covered persons” for purposes of applicability of this policy:

Covered Persons:

- All NICTD employees and former employees
- Each person employed by an architect, engineer, project or construction manager or consultant engaged by NICTD or acting for and on behalf of NICTD
- Each person employed by a contractor, subcontractor, or design-builder engaged by NICTD or acting for and on behalf of NICTD
- Any individual who receives NICTD sensitive security information (“SSI”) in accordance with this policy
- Any other federal employee defined as a “covered person” under 49 CFR Parts 1520 or 15

**3. Sensitive Security Information (“SSI”)**

SSI is defined in 49 CFR Parts 15 and 1520<sup>1</sup> and is information obtained or developed in the conduct of security activities, including research and development, the disclosure of which DOT and/or TSA has determined would (1) constitute an unwarranted invocation of privacy (including, but not limited to, information contained in any personnel, medical, or similar file); (2) reveal trade secrets or privileged or confidential information obtained from any person; or (3) be detrimental to the security of transportation and transportation safety. For NICTD, this includes any information or records that, if disclosed, may compromise the safety or security of its customers,

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<sup>1</sup> 49 CFR Part 1520 and 49 CFR Part 15 were published simultaneously by the Department of Homeland Security, Transportation Security Administration, and the Department of Transportation, Office of the Secretary of Transportation, respectively, on May 18, 2004. These rules were broadened by a technical amendment, issued January 7, 2005, to provide the protection of SSI “regardless of mode of transportation.”

its employees, or its assets; or those records that, if disclosed, may be detrimental to transportation safety and security.

SSI is also intended to include “security critical” and other similar designations for security-related information. SSI is not intended to imply a Department of Defense or Department of Energy classification. The “SSI” designation is separate and distinct from other designations such as “For Official Use Only” or “Law Enforcement Sensitive”. However, these documents may include SSI material. Some information provided to NICTD by the Department of Homeland Security (“DHS”)/ Transportation Safety Administration (“TSA”) or the Department of Transportation (“DOT”)/Federal Transit Administration (“FTA”) may already be determined to be SSI and marked as such.

Documents or other information which are generally made available to the public may not constitute SSI.

#### 4. SSI Designation

This Policy will provide specific guidance on NICTD documents that have been designated as SSI material.<sup>2</sup> Moreover, it will establish the procedure by which a document, not already so designated, might be classified as SSI and marked accordingly. A list of SSI as recognized by federal law is included in 49 CFR 15.5 and 1520.5 and is incorporated into this Policy by reference. The following list, although not comprehensive, includes documents and information that are considered SSI under this Policy:

- Any NICTD Security Plan
- Any national, regional, district or area security plan
- Any operator security program or security contingency plan
- Any security incident response plan
- Any security directive
- NICTD’s Emergency Preparedness Program Plan (EPPP)
- Threat & Vulnerability Assessments of NICTD assets including, but not limited to, those “... directed, created, held, funded, or approved by the DOT, DHS, or that will be provided to DOT or DHS...”<sup>3</sup>
- Documents in NICTD’s possession that have been designated as SSI by DHS, TSA, DOT or FTA.
- Information concerning the specific locations and design, or the operational details, of internal security measures such as sensor, detectors, alarms, cameras and barriers

Under this Policy, all such documents listed above are SSI even if they have not yet been properly marked and so designated.

The following types of information may be, in part or in whole, considered SSI under this policy:<sup>4</sup>

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<sup>2</sup> Designation of SSI material is based in part on regulations in 49 CFR Part 15.5 and 1520.5

<sup>3</sup> 49 CFR Parts 1520.5 (5) & 15.5 (5)

<sup>4</sup> It is NICTD’s intent, upon the approval & release of this policy, to add SSI markings to documents at each new release of the document.

- NICTD's Security Procedures
- Communications from or to TSA, DHS, or other federal, state or local law enforcement agencies
- Results of NICTD security inspections
- Results of NICTD security investigations
- System Security Information that has been determined to be critical to transportation safety & security
- Security training materials, including records created or obtained for the purpose of training persons employed by, contracted with, or acting on behalf of NICTD, or any outside security contractor engaged by NICTD
- Engineering and design specifications for NICTD facilities, systems or equipment if disclosure of that information could aid in planning an attack on a specific target by identifying the features vulnerable to attack

The NICTD Director of Safety and Rules will make initial designations of SSI, subject to review and approval by General Counsel and the Chief Operating Officer of NICTD.

#### **5. Identification (Marking) of SSI**

Information that has been designated as SSI will contain formal markings as follows:

The front & back cover (including a notebook or binder cover) and title page, if applicable, of the document should contain the designation mark "Sensitive Security Information" at the top and a statement limiting its distribution at the bottom. The appropriate markings for covers are shown in EXHIBIT A. Similar markings for the title page, with additional optional information for a title page, are shown in EXHIBIT B. Each page of the document should contain the slanted watermark "Security Sensitive Information", shown in EXHIBIT C, and may also be marked as "SSI" in the header or footer of the document.

Other types of media, such as CDs, DRDs, DVDs, and video documentation, should be clearly and conspicuously marked with the protective marking and the distribution limitation statement such that any viewer or listener would be reasonably likely to see or hear the SSI designation at the outset when accessing the information.<sup>5</sup> Electronic documents that are SSI should be password protected, and the password should not be directly associated with that file. It is never a good idea to send SSI by email, but if it is absolutely necessary to do so, the sender should communicate the password in a separate email or communication.

#### **6. Control of SSI**

NICTD employees, design professionals, program and construction managers, contractors, and other "covered persons" are required to take reasonable steps to safeguard and protect SSI in that person's possession or control from unauthorized disclosure. If the SSI document is not in your physical possession, it must be stored in a secure container, such as a locked desk or file cabinet or in a locked room. Persons shall ensure the marking and disposal of SSI in accordance with this

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<sup>5</sup> An excellent example would be the FBI Warning that everyone sees at the beginning of a commercially purchased or rented DVD.

Policy and 49 CFR 15 and 1520. **You should never disclose SSI to other employees or covered persons that do not have a need to know that information.** Refer requests by other persons for SSI to the TSA or the other applicable component or agency within the DOT or DHS.

If a covered person receives a record containing SSI that is not marked as specified and required by 49 CFR 15 and 1520, the person must notify the NICTD Director of Safety and Rules and mark the record as specified in such regulations and inform the sender of the record that the record must be marked as specified in such regulations. In the meantime, you should treat those documents as if they were SSI until advised otherwise.

If a covered person becomes aware that SSI has been released to an unauthorized person, the covered person must promptly inform the TSA or applicable DOT or DHS component or agency as well as the NICTD Director of Safety and Rules.

SSI may be reproduced to the minimum extent necessary consistent with the need to carry out official duties or any transit agency policy. The reproduced information should be marked and protected in the same manner as the original information (including recording the number and location of the reproduced materials).

In the case of information that is both SSI and has been designated as critical infrastructure information under Section 214 of the Homeland Security Act, any covered person who is a Federal employee in possession of such information must comply with the disclosure restrictions and other requirements applicable to such information under Section 214 and any implementing regulations.

The TSA Circular on Best Practices Guide, developed by the TSA SSI Branch, also offers a list of best practices as examples of reasonable steps, and can be located at [www.tsa.gov](http://www.tsa.gov).

#### **7. Access to SSI; Need to Know**

Generally, access to SSI is limited to NICTD employees and other covered persons *who have a need to know that information*. The following provides a guide and some examples of those who may need to know:

- The employee or covered person needs information to carry out transportation security activities approved, accepted, funded, recommended, or directed by NICTD, DHS or DOT.
- The person is in training to carry out transportation security activities approved, accepted, funded, recommended, or directed by NICTD, DHS or DOT.
- The information is necessary for the employee or covered person to supervise or otherwise manage the individuals carrying out transportation security activities approved, accepted, funded, recommended, or directed by NICTD, DHS or DOT.
- The employee or covered person needs the information to advise security persons regarding any official security-related requirements.
- The employee or covered person needs the information in connection with any judicial or administrative proceeding regarding those requirements.
- The person needs the information to provide legal or technical advice to NICTD or to a covered person regarding transportation security requirements of Federal law

A person's "need to know" may be further restricted by DHS, TSA, DOT, FTA, or other federal, state, or local regulation. Persons outside of NICTD, other than those designated as covered persons with a need to know, should not be given access to SSI. All requests for information, whether formal or informal<sup>6</sup>, about NICTD assets or security plans and procedures must be forwarded to the NICTD Director of Safety and Rules. NICTD may decide to permit limited access after review by the appropriate staff.

Anyone not currently an NICTD employee or a covered person who has a need to know and who is to be given limited access to SSI becomes a covered person subject to the obligations of a covered person under this Policy. In that case, a copy of NICTD's Policy on SSI must be attached to the SSI. Design professionals, program and construction managers contractors, vendors, and suppliers who may be expected to need access to SSI material as part of their activities may also have to attend some form of training as a requirement of their doing business with the transit agency.

#### **8. Destruction of SSI**

Subject to the requirements of the Federal Records Act (5 USC 105), including the duty to preserve records containing documentation of a Federal agency's policies, decisions, and essential transactions, all SSI must be destroyed completely to preclude recognition or reconstruction of the information when it is no longer needed to carry out transportation security measures. If you have SSI in your possession or department that is no longer needed, you must take appropriate steps to destroy it. Document owners are responsible for the retention of SSI documents according to NICTD's Records Retention Procedure. All SSI must be destroyed completely to preclude recognition or reconstruction of the information when the covered person no longer needs the SSI to carry out transportation security measures as well as for the subsequent destruction of those SSI documents.

#### **9. Consequences of Unauthorized Disclosure**

Violation of 49 CFR 15 and 1520 is grounds for a civil penalty and other enforcement or corrective action by the DOT and/or DHS, and appropriate personnel actions for federal employees. Corrective action may include issuance of an order requiring retrieval of SSI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

The disclosure or use of SSI in violation of this Policy shall also give rise to irreparable injury to NICTD, inadequately compensable in monetary damages. Accordingly, in addition to any other legal or equitable remedies that may be available, NICTD shall be entitled to equitable relief, including an injunction and specific performance, in the event of any breach or threatened breach of this Policy by any violator.

**END OF DOCUMENT**

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<sup>6</sup> Formal requests may include subpoenas, U. S. or IN Freedom of Information Act (FOIA) requests

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**EXHIBIT A – SSI Marking for Document Covers (Front & Back)**

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**Sensitive Security Information**

**WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know" as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.**

**EXHIBIT B – Sample (Optional) Title Page**

<b>Sensitive Security Information</b>
<p><i>(If this document is found, please deliver it to NICTD Security or to a manager immediately)</i></p> <p><b>NICTD System Security Plan</b></p> <p><b>January 2018</b></p> <p>CONTROL NUMBER: _____</p> <p>ORIGINATOR: _____</p> <p>Department: _____</p>
<p><b>WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know" as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.</b></p>

**EXHIBIT C – Sensitive Security Watermark**

